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THE
MECHANICS
OF LAW-MAKING.

INTENDED FOR THE USE OF LEGISLATORS, AND ALL
OTHER PERSONS CONCERNED IN THE MAKING
AND UNDERSTANDING OF ENGLISH LAWS.

2
BY ARTHUR SYMONDS, Esq.



LONDON:
EDWARD CHURTON, 26, HOLLES STREET,
CAVENDISH SQUARE.

1835.

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PREFACE.

THE principles of legislation, though not yet generally understood, have become more known of late years. The present work will not enter into that field further than is necessary to *indicate* the constituent parts and bearings of the mechanics of law-making. The subject, from its relation to quibbling, may appear to have little merit; but if usefulness be the test of merit, it will be found, in the present state of our legislation, to deserve the praise of great importance. There are occasions when the merest drudgery may be the best service. Let a house be on fire, and the work of direction fully occupied, it will be most meritorious to ply the engines. There are full enough of workmen on the general principles of our legislation: there are few or none engaged on the details of its workmanship. This, then, is the field for the exertions of a good citizen. Nor need he proceed to his task

in the temper of a quibbler: if he will imbue his undertaking with the spirit and comprehensiveness of sound principles, he may have the greater merit of realizing them. In the progress of invention, schemers often discover new principles that are fruitless, for the want of mechanical knowledge or skill to develope them in some tangible form. So our legislators often dream wisely, and talk after the fashion of their dreams; but from ignorance and want of skill in the workmanship of details, which they leave to the routine performance of mere artisans, they seldom succeed in giving to the people a law intelligible either to themselves or the persons for whose especial guidance the law was designed. The beauty of a piece of mechanism is shewn in the completeness of all its parts, and their combined action towards one grand general result. There is nothing excessive—nothing wanting. Each part has its special use, and is indispensable. Apply these principles to English laws, what are they? The clumsiest pieces of workmanship which the unskilled labour of man ever made. The present work is intended to explain the uses of the different parts of the machinery of a law, and to exhibit so much of the principles of legislation as shall entitle the work to be styled, “The Mechanics of Law-making.” It is in-

tended for the use of the legislator as well as for the professional law-maker. The Author has had several opportunities of learning the use, and indeed the necessity of such a work to our senators—whether in the shaping of their own views, to present them to the legislature, or in watching the labours of others in the same direction. At least, a member of Parliament should be able to read a law with understanding. Is it wonderful that he should not have that slender power, when the lawyers, who should be experienced in the mysteries of their craft, often find the same difficulty? The lawyers are not to blame. Our laws are written on different methods by different persons.—Even those which should be as the single Act of the legislature, corresponding in spirit, structure, and terms to other Acts of the same body, are often antagonist to each other.—The statutes of a single session contain every variety of anomaly that can be embraced in that class of composition. This must be the case till the legislature shall appoint persons to draw or revise all laws; to couch them in an uniform expression—or, at least, to take care that there be no difference in form where the substance is the same. If the time should ever arrive when our legislature shall, in its wisdom, determine on the adoption of such an expedient,

it would be necessary that it should be preceded by a Statute of Directions, governing the arrangement, style, and character of our Acts of Parliament. The present work would help, in some degree, the discussion of the legislature on this point; but in the meanwhile individual members will find that it is practically useful, to enable them to watch the labours of others, and to complete their own. It has occurred to the Author to draw a law on these principles, which had the peculiar merit of being at once intelligible to unlettered persons—who could not be made to believe that it was intended to be an Act of Parliament. There is advantage in this intelligibility. It compels an enemy to shape clearly his objections, and to address them to the substance; and where there is no disposition to thwart a good object, it prevents the interposition of that numerous class of objections which arise from an imperfect understanding of the matter. Half the labour of pushing a Bill through Parliament would be saved, if it were plain to ordinary understandings. One need not say how many bad laws would never have been passed, or how many good laws would have been more complete. The people would object in time; and when the legislature had finally resolved, both the magistracy and the people would know

what was to be enforced. How Draconic English legislation has been is known too well, and been too constantly lamented. Let a step be made in good sense, and those who aspire to do good, learn how good is to be done.

This work is not a theoretical work, unfounded in practice. The theory has been the result of practice and observation. It may, however, contain some things that are questionable—some things that are new—and some that are imperfectly explained. A single person can rarely develop a science. His position may not give him sufficient scope for experience—and his powers may not be various enough to fit him to appreciate all points, and circumstances, and subjects. It is for this reason that nations have representative bodies, composed of persons of all interests and feelings, to deliberate upon and enact their laws. The author does not pretend to accomplish a physical and mental impossibility. This is an attempt which, like an early invention in a new field of discovery, may gather much of improvement from his own future efforts, and the efforts of others in the same walk.

The *plan* of the present work may require some explanation. It does not, in the usual method of treatises of this nature, begin by laying down general principles, founded on ar-

bitrary analysis, and afterwards proceed to test the subject by them. However suitable such a method may be in other cases, in the present it has not the same recommendations. It would want the advantage of practicalness, which is the first object of the undertaking. It has been thought better not to proceed from the Author's side of the matter, but at the other end—the reader's; and, by carrying him through the same process of examination which the Author has pursued, to unfold the necessity as well as the force of the views which are urged in the course of the following observations. The reader is supposed to have before him an Act of Parliament—not unlike a piece of statuary, whose value is unknown from being encrusted with mud and other foreign substances. The first step is to remove, carefully, this incrustation, until the figure shall appear in all its naked beauty. Whatever may be its merit, it will then be discovered; but, at the same time, it may also be found that, though not without some points of excellence, the conception of the whole is wanting in vigour and singleness: that infinite pains have been bestowed on frivolous artifices—and, that in fact, the art which should have been the handmaid of genius, has entrapped the affections of the votary from his original object.

The mind, relieved of all the merely conventional accessaries, is at liberty to rest on essentials, and, in the simplicity of an earnest energy, to cast in the mould of a happy expression the idea sought to be conveyed.— In such a case, the expression will be contained not only in the fewest words, but they will be the aptest of the kind, and most aptly placed. From this idea sprang the plan which has been pursued in the present work. There was an additional reason for this proceeding, that though the first part of the work will be somewhat dry, it will be useful as long as the present absurd and incongruous style of legislation shall endure. It, therefore, properly takes the first place, as it is of most instant service. To those reformers who prefer to advance slowly and with caution, the plan of proceeding offers a mode of gradual reforming. Nor will they be without opportunities. Few, if any Acts of Parliament offer no room for fair criticism. To other men, who would cling to the present system, and yet would introduce all improvements compatible with it, the same means of indulging their inclinations are afforded; while to the more comprehensive-minded, and yet more practical reformer, who would make the laws as brief, as clear, and as

simple as laws might be made, this book will furnish some useful helps.

In the spirit of the proverbial saying, that "What is every body's business is nobody's," it may be asked, of whom may we expect the adoption of these improvements? Every member of the legislature is, indeed, individually responsible for all the absurdity and nonsense which may come forth as the Act of the legislature, without question or remonstrance on his part; but the member who is the author of the measure is, in an especial manner, responsible to his own reputation for suffering himself to be regarded as the reputed author of such results. To the Government, however, there is most reason to look—for nearly two-thirds of the Acts of a session are introduced under its auspices. It has, moreover, the assistance of legal agents, and the means of purchasing the services of competent ones: but individual members may, by their example and assistance, induce the Government to adopt a better plan; and then its example would, in time, lead the legislature to the general adoption of the same improvement.

When the Author first engaged upon this undertaking, he thought there was much more

than there is of natural complexity in our laws. He may have failed to make the grounds of his own convictions fully and forcibly apparent to others in the narrow limits of this little book*—but if any body will be at the pains of following the current course of legislation, or reviewing the past, he is confident that he must come to similar results, and that the work of reform in this important matter is not so difficult but that the most humble may do a great deal to bring it about.

May, 1835.

* The Statutes of a single Session usually occupy an octavo volume of several hundred pages. A Commentary may well claim the space that is here afforded—and yet fall far short of what is necessary to unfold the entire subject. The Author fears that, from this cause, there are many parts of this work where important views are touched upon, which may expose him to the imputation of superficialness or of rashness, if it be not recollected that he has laboured to indicate not to develope—the subject.

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PART I.

THE ART OF READING AN ACT OF PARLIAMENT AS AT PRESENT WRITTEN.

- 1. WORDS.**
- 2. PHRASES.**
- 3. CLAUSES.**
- 4. ON THE ACT GENERALLY.**

WORDS.

THE Act of Parliament being before you, first strike out every word that is not required to fill up the meaning, and which may be omitted without affecting the structure of the sentence. At first the process will be tedious: the paper will be covered with blots: and if you are not very cool tempered, you may lose your patience, and be disposed to run the pen through the entire act. A repetition of the labour will give skill and readiness; and after a little while, the mind will perform the task at once, without pen and ink or pencil, or the risk of confusion.

Take a few examples of the benefit of this rule, and the improvement that comes from simplicity.

“ And be it enacted that no person *or persons*
“ shall keep *or maintain* any boat *or boats* to ply for
“ hire over *or across* the said river at any place
“ between the distance of one mile above and one
“ mile below the bridge intended to be built *as afore-*
“ *said, or to carry* or convey for hire any passenger,
“ *or passengers*, cattle, carriages, or goods *which is*
“ *or are* subject to *or chargeable with* toll *or duty*
“ by this act, over *or across* the said river Shannon,
“ except such person *or persons* as shall be licensed
“ or appointed by the said Commissioners or their
“ successors.” (4 & 5 W. IV. c. 61. s. 23.)

This is a case of simple *verbiage*. The extrusion of the unnecessary words, except in one instance, makes the sentence quite clear. The substitution of the word "now," for "which is or are," is the only alteration. It would, perhaps, be less questionable to make the plying for hire, and not the keeping the boat, the subject of the prohibition. The transposing "ply for hire" before "any boat," cures the defect. Read without the italic words.

" And be it enacted that no person shall keep any
 " boat to ply for hire over the said river at any
 " place between the distance of one mile above,
 " and one mile below the bridge intended to be
 " built, or convey for hire any passenger, cattle,
 " carriages, or goods now subject to toll by this act
 " over the said river Shannon, except such person as
 " shall be licensed or appointed by the said Commis-
 " sioners or their successors." (4 & 5 W. IV. c. 61.
 s. 23.

Take another example.

" And be it *further* enacted that the leaving of any
 " summons *authorised to be issued by any Commis-*
 " *sioner, Assistant Commissioner, or Justice of the*
 " *Peace, under this Act*, at the usual or last known
 " place of abode of the party to whom such summons
 " shall be directed, shall *in every case be deemed good*
 " *and* sufficient service of such summons." (4 & 5 W.
 IV. c. 76, s. 90.

This may appear a selected case, but in reality it is not. It will be admitted that it

illustrates several defects. It is a first principle that an Act of Parliament affects those matters only that relate to its subject. It needs no specification to separate the summons intended by this Act from all other summonses, especially too where the enactment relates not to the matter of the summons, but to the manner of proceeding connected with it; for it is plain that if the summons be unauthorized, the service of it must be bad in whatever way it is done. The mere length of the sentence is not the whole evil. The special phrasing diverts the mind from the object of the clause; and if another act on the same subject should be passed requiring a summons to be served, and it should omit to make a provision similar to the one here remarked upon, by the operation of the words, "under this act," such service would, in the case of the new summons, be inoperative, because the inference would be that all other summonses, not contemplated in terms in this provision were to be dealt with after another fashion.

Is the abridgment deficient in clearness?

"And be it enacted that the leaving of any summons at the usual or last known place of abode of the party to whom such summons shall be

" directed, shall be sufficient service of such summons." (4 & 5 W. IV. c. 76. s. 90.)

But this is only a specimen of a pervading evil. The same precise over-specification of non-essentials runs through the Act; and every body is led to suppose, that something is meant which none but the initiated can comprehend; the mind is driven to compare minute differences, and in the process overlooks the broad principle, or simple proceeding, which the legislator intended to be the matter of his writing.

" And be it *further* enacted that any three or more of the Commissioners of Excise shall constitute a board *of Commissioners of Excise, and shall have full power and authority to act as a Board of Commissioners, and to order and direct, and do, and to permit to be done* throughout the United Kingdom, *or in any part thereof, all acts, matters, and things relating to the revenue as fully and effectually as if ordered, directed and done, or permitted to be done by a board [composed] of four of the said Commissioners of Excise as required by the said act.*" (4 & 5 W. IV. c. 51. s. 2.)

With a very slight addition and alteration, this clause would be complete without the words printed in italics.

" And be it enacted that any three or more of

“ the Commissioners of Excise shall constitute a Board, and may order and do throughout the United Kingdom all things relating to the revenue as effectually as a board composed of four of the said Commissioners of Excise, as required by the said act.” (4 & 5 W. IV. c. 51. s. 2.)

And again for—

“ And be it further enacted that from and after the passing of this act, no child who shall not have attained the age of ten years, shall be bound or put apprentice to any person using the trade or business of a chimney-sweeper.” (4 & 5 W. IV. c. 35. s. 2.)

Read—

“ And be it enacted that no child under ten years of age shall be apprenticed to any chimney-sweeper.”

The “ from and after the passing of this act” is not necessary, as it takes effect from the passing, if no other time be named. The other changes are obvious. “ Apprenticed” is a more simple and concise term than “bound and put apprentice.” The word is in common acceptance; and the little sweeps will understand the term “ chimney-sweeper” more readily than “ any person using the trade or business of a chimney-sweeper;” but to guard against all ambiguity, or the risk of it,

the definition might be inserted once for all in the interpretation clause, that the word chimney-sweeper should include every person carrying on the trade or business of a chimney-sweeper. Perhaps the phrase "who shall not have attained the age of ten years," is more formally complete, but it is idiomatically excessive. Our Acts of Parliament are written in the style of a foreigner who has learned the language out of book, with the aid of a grammar. Grammatical rules are nowhere violated, yet it is difficult to recognize in his finical preciseness one's own language. A law should be written in the tone of the language of the time (for which we have Lord Coke's authority;) and when that has become obsolete, it should be altered; but it will be found that the idiomatic structure, which has relation to the matter of a thing, does not change so fast: and the laws would help to preserve the sameness of meaning.

Take again the 14th section of the Exchange of Lands in common fields' Act. The excessive words are put in italics.

" And be it *further* enacted that the Justices of
" the Peace *for the several counties, ridings, divisions,*
" *cities, towns, liberties and precincts,* within England
" and Wales shall, in the manner directed by an
 passed in the 57th year of the reign of King
 he Third, intituled: An Act to enable

“ Justices of the Peace to settle the fees to be taken
 “ by the Clerks of the Peace of the respective
 “ counties, and other divisions of England and
 “ Wales, *ascertain, make, and settle* a table of fees
 “ *and allowances* to be taken by the Clerks of the
 “ Peace, *for such counties, ridings, divisions, cities,*
 “ *towns, liberties, and precincts,* for their trouble in the
 “ execution of the duties imposed upon them by this
 “ act, and such fees shall be subject to alteration and
 “ regulation in the manner by the said Act directed.”

There is a singleness of object in this clause;
 the excess of the *verbiage* too would be easily
 remedied, by a declaration in a statute of con-
 structions, that whatever a functionary of local
 jurisdiction is required to do, shall be held to
 respect only the locality or the persons inha-
 biting it, over which the jurisdiction extends.

The clause might run thus :—

“ And be it enacted that the Justices of the
 “ Peace for England and Wales, shall, in the man-
 “ ner directed by an act, &c., make, and from time
 “ to time regulate, a table of fees to be taken by the
 “ Clerks of the Peace for the execution of the du-
 “ ties imposed upon them by this act.”

Again, in the 13th section of the Pensions’
 Act is the following instance of the overlook-
 ing the object of the clause, and in consequence
 introducing an useless phrase.

“ And be it further enacted that all compensations

“ and allowances granted, or hereafter under this act
“ to be granted, as pensions or superannuations, shall
“ be paid [to the persons entitled to receive the same]
“ without any abatement or deduction in respect of
“ any taxes or duties whatever at present existing.”

The words in brackets could have no relation to the occasion. The object of the clause is to guard against deduction. Read the clause without these words, and with other obvious abridgments.

“ And be it enacted that all pensions or super-
“ annuations granted, or under this act to be granted,
“ shall be paid without any deduction in respect of
“ any taxes at present existing.”

If we examine the Appropriation Act of the session of 1834, we shall find that of twenty-six pages, to which length it runs, several are occupied by the following phrase : “ and that the said sum be issued and paid, without any fee or other deduction whatever.” This preposterous length came, with other aids, from the repetition of the phrase after many of the items of the parliamentary votes of supply, recounted in the Act. A declaration that all sums directed by this Act to be issued and applied for the several purposes therein mentioned should be issued and applied without the payment of a fee, except where the contrary was expressed, would with the addition

of "subject to the usual fees and deductions," to such excepted items, have served the purpose. There are other verbosities which assist to swell the Appropriation Act to a huge length. "Any sum or sums of money not exceeding" are repeated two hundred times : the mention of any "sums of money not exceeding" would answer the purpose better, and if the words "of money" were omitted, there would not be one jot less of clearness and precision. The reduction of these words would make one page less in twenty-six.

But this is not all—five or six pages more are occupied with the words, at full length, "from the first day of April, one thousand, eight hundred and thirty-four, to the first day of March one thousand eight hundred and thirty-five, both days inclusive ;" or, "to the thirty-first day of March, one thousand eight hundred and thirty-five" alone, to the end, it might be said, of making the Act so tediously long, that it is necessary to insert in the margin in brief the matter of each sentence : and nobody ever thinks of reading the body of the act, except the clerk whose business it is to draw it up or examine it. Nor are these words always necessary for the sake of precision, inasmuch as each clause usually relates to a particular service, and begins

this way :—"And it is hereby also enacted that out of all or any of the aids or supplies aforesaid, there shall and may be issued any sum or sums of money not exceeding (the total sum devoted to the service,) for and towards the (naval) services hereinafter mentioned, that is to say (and then it goes on to enumerate) any sum or sums of money not exceeding (the sum in full length) to defray the charge of wages to (so many in full length,) of seamen and marines, and to the ordinary and yard craft which shall come in course of payment in the year ending the thirty-first day of March, one thousand eight hundred and thirty-five." Now, by the addition of these latter words to the first part of the clause, they would be unnecessary after each sentence. But the whole clause would better stand thus :—

" And it is hereby also enacted that out of the
" supplies aforesaid there shall be issued any sums
" not exceeding £4,518,000 for the naval services
" hereinafter particularly mentioned for the year
" ending the thirty-first day of March, one thousand eight hundred and thirty-five ; that is to
" say, any sum not exceeding, &c."

Those cases in which the items did not belong to a particular service, as the army, navy,

ordnance, might be included in one clause to this effect;—that all the grants thereby made should be made for the service of the year commencing on such a day in one year, and terminating on such a day in another, except where the same are particularly expressed to be for a different period, or without reference to time. These exceptions as well as the former ones, in which fees are to be paid, being the fewest in number, the singularity would be more remarkable. At all events, it would be more easy to mark the exceptions than the more numerous particulars of the rule.

It is not unlikely, that after having cleared the way by the rejection of these larger excesses, it would be found that this Act might have been reduced from twenty-six pages to thirteen, with a vast gain of intelligibility, and a reduction of all the other “costs, damages, and expences,” that attend the writing, the copying, the printing, and the paper which in its different stages it requires, besides the clerkly exertion of examining, and all other incidental items of exertion.

From these examples it will be seen how much the wording of an Act of Parliament is like the sound of ding-dong ding-dong-dell. The constant repetition of the same words, and of what may not inappropriately be

termed, their doubles or equivocations, gives an air of sing-song to the style. In all that is here said on this point, it is not meant to attribute any fault to anybody. Here the thing is : it has been done,—and men who presume not to disturb the established order of things, quietly follow in the wake of their predecessors. It is hard to do a good thing, and to be laughed at for one's pains ; this would be the fate of a single member or official, who had not a forward position in public favour, and therefore it is not wonderful that nothing has been done to correct a grievance of old standing. The best way of reforming these matters would be by the establishment of an uniform practice. Most men, lawyers in particular, have become accustomed to the jingle of the words, and though sensible people, they can scarcely believe, even on reflection, that the meaning is full and clear, if the usual formularies of expression are not employed. This, however, is an evidence of the evil, as well as of the difficulty of remedying it. It shows how indistinct are the common impressions of the legal meaning of the terms, and how hesitating and doubtful even the best informed minds become, through the want of definiteness for which our Acts of Parliament are distinguished. It has often happened that on presenting an Act to an in-

telligent man, he has said : " Don't give me that, but tell me what it means," and the lawyer's popular explanation, given off hand, shall be more precise, definite, and clear, than the elaborate wording of the law itself, even to the practised lawyer. The latter finds it necessary to cast away the profuseness of expression, to forget it, and then he is able to deal with the marrow of the Act.

Acts of Parliament have been less verbose since it has been the practice not to use the plural and singular, as " person or persons ;" but it is one of the most obvious defects of the present system that this practice is not uniformly adopted. In the Acts of the last session, there are many where this discountenanced verbosity is still retained.

To facilitate the task of retrenching all useless *verbiage*, a glossary of proscribed words is furnished in another part of this book. It is put there, in order to save the necessity of printing it twice over, and to give it the advantage of later additions.

In this glossary will be found words of the most ordinary recurrence in Acts of Parliament. The notes, explanatory of the principle of their exclusion, which are appended, will supply a clue to the exclusion of others, which

the craft of small law-makers may hereafter suggest for the stuffing of English laws.

PHRASES.

After the rejection of all unnecessary words, to which we have chiefly confined ourselves, the act will have undergone a great improvement; but it will be found that in consequence, the structure of the sentences is susceptible of very advantageous modification.

The necessity, created by the verbal elongation and diffuseness, of referring backwards and forwards to other parts of the same act, leads to a further necessity for elongation and diffuseness in the general style. By reducing the length, such references may also be rejected. By this time the language assumes the English character, and plain people may begin to understand it.

One especial mode of interlacing, is a constant reiteration of all the qualities, incidents and relations of a thing, as often as its name is repeated, as: "subject to the terms, conditions and exceptions herein prescribed," "the person so compounding, so assessed or com-

pounding." If it be a tax: "raised, levied, collected, received, and paid," or a penalty: "enforced, recovered, mitigated." These words, instead of bringing more closely together the separate parts of an act, have the contrary effect of scattering and disconnecting them.

Wherever it is indispensable for clearness' sake to use abundantly such phrases of reference, it may surely be pronounced that the arrangement of the act is not good, that parts which should be near are remote, and that they do not follow in their natural order—or it is a test of the frequent use of circumlocutory terms, that throw the parts of the act far asunder; or of an unnecessary abundance of words.

Sometimes it happens from the want of some general distinctive cognomen—sometimes from a crowded placing together of unnecessary subjects, or in wrong places.

The phrasing is, in consequence, a fair test of the excellences or defects of an act in other respects.

Take the following example of roundabout phrasing from the last Assessed Taxes Composition Act.

"And be it enacted that every person who is or shall be duly assessed to, or who hath compounded under the said former Acts for his dwelling-house, warehouse, shop, or other premises in respect of the

“ windows, or lights therein, for the year ending
“ on the fifth day of April, one thousand eight
“ hundred and thirty-five, shall be entitled to make,
“ or open and keep open, free of duty any additional
“ number of windows or lights in his dwelling-
“ house, warehouse, shop, or other premises so
“ assessed or compounded for, and that no person
“ not so assessed or compounding by reason of his
“ dwelling-house, warehouse, shop, or other pre-
“ mises not containing seven windows or lights,
“ shall be brought into assessment, or made liable
“ to rates and duties, because of the opening of any
“ additional number of windows or lights in such
“ dwelling-house, warehouse, shop, or other pre-
“ mises, provided always that if any such person
“ as aforesaid whether he shall be assessed, or hath
“ compounded, or shall be liable to be assessed as
“ aforesaid or not, shall erect or build any addition
“ to such his dwelling-house, warehouse, shop, or
“ premises, or make or open any communication
“ with any other tenement or building adjoining or
“ near thereto, then and in any such case all the
“ windows and lights in such dwelling-house, ware-
“ house, shop, or premises and in such additional
“ or adjoining tenement or building shall be rated
“ and assessed together to the said duties in like
“ manner as the same would before the passing of
“ this act be liable to be rated and assessed under
“ any act or acts in force.”

The object of the above clause is quite lost sight of in its servile phrasing. The conditions appended have no relation to the subject matter.

The object of the clause was to enable every body whether then assessed or not to the window duty, to open more windows in the premises which they then occupied, without incurring a higher rate of duty or becoming liable to be assessed. The universality of the provision is not expressed. The mind first rests on one class, then on another:—but there is no apparent reason why the distinction in terms should be made, for the rule of the exception equally regards both.

The following seems to contain an explicit paraphrase, in the professional manner, of what is popularly and forcibly expressed above: how much more explicit than the former example,

“ That no person shall be charged with window duty
“ for any additional number of windows which he
“ may open in the premises in respect of which he
“ is now assessed or has compounded, or is free
“ from assessment on account of the same not containing seven windows, unless he shall build any
“ addition to such premises, or open any communication between them and any adjoining building,
“ and that in any such case he shall be chargeable
“ with the window duty as he would have been
“ under any other act in force.”

The following is a short example of a common provision. The reader will judge of the amplitude of the statute, the enactments of

which are couched in such full and flowing language.

“ And be it further enacted that all the powers, authorities, provisions, regulations, directions, fines, penalties, forfeitures, clauses, matters and things whatsoever in the said hereinbefore in part recited acts or any of them contained, in relation to the said rates and duties thereby granted, or the levying, recovering, collecting, receiving, taking, paying and accounting for the same, or in relation to any other act, matter or thing whatsoever shall so far as the same or any of them are applicable, to the rates and duties granted by this act or any other of the purposes thereof, and are in force at the time of the passing of this act and are not hereby repealed, altered, or otherwise provided for or rendered unnecessary, extend and be construed to extend to the rates and duties by this act granted, and to all the other purposes thereof and shall operate and be in force in respect to the said rates and duties and other purposes of this act, according to the true meaning of this act, as fully and effectually to all intents and purposes, as if the same powers, authorities, provisions, regulations, directions, fines, penalties, forfeitures, clauses, matters and things, were repeated and re-enacted in the body of this act.”

This is in the style of an ordinary provision for bringing a later act within the operation of former existing ones—the error appears to be in seeking the generality, through

the accumulation of specified particulars. One is quite bewildered by the enumeration. It is as if a man should describe a house, not merely by telling its height and depth, but every room within it, and the furniture and ornaments of each room. The following seems to be all that is sufficient to convey the same meaning, except to highly seasoned understandings, which require an inordinate stimulus to fix the attention.

“ And be it enacted that the recited acts so far
“ as they are applicable to the purposes of this act
“ and so far as they are in force, and are not affected
“ hereby, shall extend in all respects to the purposes
“ of this act.”

It were needless to give more instances of the positions contended for. It will be sufficient to give some rules, for the guidance of the reader, in unmasking the true meaning of an Act.

It would be almost always a safe rule to strike out such phrases “as aforesaid,” “hereinbefore mentioned,” or “hereinafter mentioned,” “mentioned or referred to,” “hereby required,” or “by this act required,” or similar terms of reference. At least, they should excite caution. “As aforesaid,” can never be necessary where “so,” or “such,” or the like

terms have been used, and if nothing more be said of the same point, "hereinbefore" is useless. Indeed, neither "hereinbefore," nor "hereinafter" are of any use, except where a distinction is to be drawn between the conditions of the thing as described before and after. If the condition be uniform throughout the act, it would be as wise to say "hereinbefore and hereinafter."

The other terms referring "to this act," need seldom be used, for it is presumed that every thing is to be done according to it, and not according to any other act: and where it is especially necessary to be guarded, as: "under any act or acts now in force," it will usually be the proper course to consolidate, or at all events, by a simple reference to the other acts in one place to connect them with the present.

The best manner of trying the value of these rules, is to recur to the practice which men of business usually adopt in taking notes. They take note of the substance of the phrase, casting away the reference either backwards or forwards. The real question is, whether by the excess of *verbiage*, or by the roundness and formal completeness of the sentences, more is expressed than could be expressed clearly in the shorter method. However this may be,

it is not safe to read an act without trying some such plan upon it; because the oddness of the phraseology will not be understood until the mind has been accustomed to its interpretation in ordinary language. As many of the clauses are formally repeated in many acts, the interpretation having been once obtained, they may be read short. The labour of perusing these documents, will, in consequence, be greatly abridged.

CLAUSES.

The next stage is the structure of the clauses:—many things are brought in the same clause, that would be more intelligible if separated. The confusion produced by the multiplicity of words and the complexity of the sentences, helps to conceal the absurdity of clubbing together topics—sometimes not of a kindred nature; relating, perhaps, to different persons, times or places; and arising under different contingencies. To understand an act of parliament it is necessary to take each point separately. Do it in the following manner, exemplified in the print of the mutiny act, printed by authority, for the use of the army.

“ And be it enacted that every soldier shall be
“ liable to be tried and punished for desertion from
“ any corps into which he may have enlisted or
“ from his Majesty’s service, although he may of
“ right belong to the corps from which he shall have
“ originally deserted;——and if such person
“ shall be claimed as a deserter by the corps to
“ which he originally belonged and be tried as a
“ deserter therefrom, or shall be tried as a deserter
“ from any other corps into which he may have en-
“ listed, or if he shall be tried while actually serving
“ in some corps for desertion from any other corps,
“ every desertion previous or subsequent to that for
“ which he shall be under trial, as well as every
“ previous conviction for any other offence, may be
“ given in evidence against him;——and in like man-
“ ner in the case of any soldier tried for any offence
“ whatever, any previous convictions may be given
“ in evidence against him;——provided that no such
“ evidence shall in any case be received until after
“ the prisoner shall have been found guilty of such
“ offence, and then only for the purpose of affixing
“ punishment;——and provided also that, after he
“ shall so have been found guilty, and before such
“ evidence shall be received, it shall be proved to
“ the satisfaction of the court that he had previously
“ to his trial received notice of the intention to
“ produce such evidence on the same;——and
“ provided further, that the court shall in no case
“ award to him any greater or other punishment or
“ punishments than may by this act and by the

“ articles of war be awarded for the offence of which
“ he shall so have been found guilty.”

But in the authorised publication of the Articles of War, there are some completer methods of analysis, which will be found of practical use, in reading complicated clauses.

“ Any officer or soldier who shall use traitorous
“ or disrespectful words against our royal person,
“ or any of our royal family ; — or

“ Who shall advise or persuade any other officer
“ or soldier to desert our service ; — or who shall
“ knowingly receive and entertain any deserter, and
“ shall not immediately on discovery give notice to
“ the commanding officer, or to the secretary at war,
“ or shall not cause such deserter to be apprehended
“ by the civil power ; — or

“ Who shall be found drunk on any duty under
“ arms ; — or

“ Who, being under arrest, or in prison, shall
“ leave or escape from his confinement before he is
“ set at liberty by proper authority ; — or

“ Who shall send any flag of truce to the enemy
“ without due authority ; — or

“ Who shall give a parole or watchword different
“ from what he received, without good and sufficient
“ cause ; — or

“ Who shall in operations in the field, spread
“ false reports by words or letters ; — or create un-
“ necessary alarm by spreading such reports, either

“ in the vicinity or in the rear of the army;—or
“ Who shall, in action or previously to going into
“ action, use words tending to create alarm or des-
“ pondency;—or

“ Who shall either verbally or in writing, disclose
“ the numbers, positions, magazines, or preparations
“ of the army, for sieges or movements, and by such
“ mischievous communications produce effects inju-
“ rious to the army and our service;—or

“ Who shall leave the ranks in order to secure
“ prisoners or horses or on pretence of taking
“ wounded officers or men to the rear without orders
“ from his superior officer;—or

“ Who shall leave his guard, piquet or post—
“ shall be taken prisoner by any want of due precau-
“ tion, or by disobedience of orders;—or fall into
“ the enemy’s hands by passing through out-posts;
“ —or

“ Who shall irregularly detain, seize or appropriate
“ to his own corps or detachment, bread, spirits,
“ forage, or any supplies proceeding to the army,
“ contrary to the orders issued in that respect;—
“ or

* * * * *

“ SHALL, if any *officer*, for each and every one of
“ the aforesaid offences, on conviction thereof before
“ the *general* court-martial, be cashiered;—and if
“ a *soldier*, SHALL, on conviction thereof before a
“ *general*, *district*, or *garrison* court-martial, be
“ liable to such punishments as shall accord with the

“ provisions of the mutiny act and with the usage of the service.”

Where the matters contained in a clause are not inappropriately brought together, the appearance of complexity and a jumble is produced by putting that first which should come last:—or by enumerating at the outset all the conditions to which the general rule intended to be conveyed by a clause, is to apply. It would be always better to state at first the rule: and then the special cases to which it is to apply either in the way of instance or as including the whole class; thus:

And be it enacted that every person, in this clause enumerated, shall be subject to the penalty of £1, that is to say.

Every person who shall, etc.,

Every person who shall, etc.,

in the manner usually adopted when tolls or taxes are imposed. In this way all the contingencies are separately taken; and it is impossible to doubt. This plan should be adopted in reading an act:—Find out the general rule; state it, and underneath enumerate the instances.

It is singular that a method so convenient, which has been adopted occasionally in our public acts should not have been always used.

The neglect must be attributed to the distaste which the wording and phrasing of our statutes, have created in the minds of the legislators as well as with the public.

The 19th section of the 4 per cent Annuities Act of last session, is a fair specimen of conglomeration. The clause affects a most numerous class of men, women, and children, who have not much skill in reading Acts of Parliament.

“ And be it further enacted, That in every case
“ in which any Question may have arisen or may
“ arise upon the Execution of any Trusts, or upon
“ any Distributions which may have been or may be
“ made or may remain to be made, by any Trustees,
“ Executors, or Administrators of or in relation to or
“ arising out of any such Four Pounds *per Centum* Annuities, or of any Parts or Proportions of any such
“ Four Pounds *per Centum* Annuities which may have
“ been vested in any Trustees, or which may have
“ been distributable by any Executors or Administrators, or as to the Application of any Residue thereof,
“ or as to the Distribution or Application of any Three
“ pounds Ten Shillings *per Centum* Annuities transferred under the Provisions of this Act in lieu of
“ any Four Pounds *per Centum* Annuities, whether as
“ to the Powers or Authorities of any such Trustees,
“ Executors, or Administrators, or as to the relative
“ Interest of any Persons entitled under such Trust, or
“ under Wills, to receive any Annuities charged upon
“ or arising or payable out of the proceeds of any such

“ Four Pounds *per Centum* Annuities, and of any
“ persons interested in any residue of any such Four
“ Pounds *per Centum* Annuities, whether under any
“ specific Provision relating to any such Trusts, or
“ contained in any Wills, or arising out of the Exe-
“ cution of any Wills by any Executors, or the distri-
“ bution of any estates by any Administrators, and
“ in all other Cases whatsoever in which any Ques-
“ tion may arise in consequence of the Transfer of
“ any such Four Pounds *per Centum* Annuities into
“ Three Pounds Ten Shillings *per Centum* Annuities,
“ it shall be lawful for any such Trustees, Executors,
“ or Administrators, and for Persons entitled to or
“ interested in any such Four Pounds *per Centum*
“ Annuities, or any Three Pounds ten Shillings *per*
“ *Centum* Annuities created in lieu thereof, or in
“ any Proceeds of any such Annuities whether in
“ Reversion or otherwise, to make Application to
“ the High Courts of Chancery, or to the Courts of
“ Exchequer in *England* or *Ireland* respectively, or
“ the Court of Session in *Scotland*, in a summary
“ Way, either by Motion or petition, and it shall
“ be lawful for the High Courts of Chancery, or for
“ the Courts of Exchequer in *England* or *Ireland* res-
“ pectively, or for the Court of Session in *Scotland*, to
“ make general Orders in relation to any such Ques-
“ tion or special Orders in a summary Way upon any
“ such Application, or as to any other Matter or
“ Thing relating to any such Annuities, or to
“ any Dividends thereof, or to any Three Pounds

“ Ten Shillings *per Centum* Annuities which may be
“ created in lieu thereof, or to the Application of
“ any such Three Pounds Ten Shillings *per Centum*
“ Annuities, or any Dividends thereof; and no Appli-
“ cation, Petition, or Affidavit made by or on behalf
“ of any Trustees, Executors, or Administrators, or
“ Trustee, Executor, or Administrator, or other Per-
“ son or Persons interested in any such Annuities, or
“ any Dividends thereof respectively, nor any Order or
“ the said Courts respectively, in consequence of any
“ Report made or other Proceeding had in either of
“ Question which may arise out of any of the Pro-
“ visions of this Act in relation to the Four Pounds *per*
“ *Centum* Annuities, or any Part or Share or Shares
“ thereof, or in relation to any Three Pounds Ten
“ Shillings *per Centum* Annuities which may be created
“ under this Act in lieu of the said Four Pounds *per*
“ *Centum* Annuities, or the Dividends of such res-
“ pective Annuities, nor any Copy or Copies of
“ such Application, Petition, Affidavit, Order, Re-
“ port, or other Proceeding, shall be subject or
“ liable to be stamped, or charged, or chargeable
“ with any Stamp Duties whatever, any thing in any
“ Act or Acts of Parliament to the contrary notwith-
“ standing; and all Trustees, Executors, Adminis-
“ trators, and other Persons acting under any Orders
“ made by any or either of such Courts respectively,
“ or whose Acts shall be confirmed by any or either
“ of such Courts respectively, if done before any
“ *ication* made to any or either of the said Courts

“ respectively, shall be and are hereby fully indemnified against all Actions, Suits, or Proceedings for or in respect of any Act, Matter, or Thing done by them respectively in pursuance of or under any such Order, or which shall be confirmed by any such order; and in case any Action, Suit, or other Proceeding be commenced or instituted against any such Trustee, Executor, Administrator, or other Person, for or in respect of any such Act, Matter, or Thing, it shall be lawful for the Court in which such Action, Suit, or Proceeding shall be commenced, or shall be pending upon summary Application to stay, and such Court is hereby required to stay such Action, Suit, or Proceeding, and to make such Order relative to the Costs thereof as such Court shall think expedient.”

This clause could scarcely come within the following apt remark on the pleasure which may be derived from a work whose dryness promises no gratification.

“ We once heard an eminent lawyer declare that a clause of an act of parliament, in which the arrangement of words was the best that could be, gave him as much pleasure in the perusal as the finest stanza of Spencer's. *** Every thing which is perfect in its kind, and consummately contrived to answer its purpose may convey to one who understands its skilfulness, a pleasure similar to that with which we contemplate what is more distinctively

denominated a work of art." — *Quarterly Review*
No. 105, p. 57.

The following is an attempt to realize this idea, so far as the mingling of many points in the same clause will permit. It is short, perhaps plainer; and it is believed, not more deficient in meaning. The heterogeneous nature of clauses results from making them perform the office of a section, which is sometimes necessary in the present mode of drawing an act of parliament, from the want of some leading divisions to bind together the clauses that relate to them respectively, and not to other parts of the act.

“ Whereas portions of such four pounds *per centum*
“ annuities are held by persons, not on their own
“ behalf, but as trustees, either as trustees so called
“ or as executors or administrators on behalf of
“ others, and questions may arise or may have
“ arisen in relation to the execution of such trusts,
“ or any distribution already or hereafter to be made
“ of such funds, or on any other point in relation
“ to such trusts or funds, in consequence of the
“ transfer of any such four pounds *per centum*
“ annuities to three pounds ten shillings *per centum*
“ annuities. Be it enacted, that any such trustees,
“ or any persons interested in the principal or proceeds of such annuities, whether in reversion or
“ otherwise, may in reference to any such question,

“ apply to the court of chancery or to the courts
“ of exchequer in England or Ireland respectively,
“ or to the court of session in Scotland in a summary
“ way, either by petition or motion, and such courts
“ may make general orders, (or special orders in a
“ summary way on any such application,) in re-
“ lation to any such question or on any point re-
“ lating to such annuities or the proceeds thereof.
“ And no judicial proceedings nor any thing connected
“ therewith, made under this clause, shall be charge-
“ able with any stamp duty. And all persons acting
“ under any orders made by either of the said courts
“ respectively, or whose acts shall be confirmed
“ by either of the said courts, shall be indemnified
“ thereby, and in case any proceeding be instituted
“ against any such person in any court of justice,
“ such court may, upon summary application, stay
“ the same, and make any such order as to costs
“ as shall be fit in the case.”

The foregoing must close the illustrations on clauses. It would weary the reader, to little purpose, to give more. The last instance, it will be observed, is an illustration of the subjects of the former sections as well as of the present.

ON THE ACT GENERALLY.

Having subjected each clause to the operation of a reduction of all useless words, a new modelling of all uncouth sentences, and the separation of all points that ought to be taken independently of others, or at least distinguishingly the act will be in a state to be considered with a view to its general construction. This object ought to be assisted by a skilful arrangement of the clauses: but this is seldom attended to in our acts of parliament, as at present drawn. There is not, as in a deed, any scientific arrangement establishing an orderly sequence of the parts of the law, so that by the comparison of one with another, its peculiarity or correspondence may be judged. Each law proceeds after its own method, in the disposition of its provisions, as in the use of every variety of phrase. It is impossible, therefore, to give any specific rules to guide the reader. But there is this general rule;—he must consider all the parts of the act such as they are: the title, the body, the provision, the exceptions, and so on; and having separated the substantial from the accidental, the body of the enactment from the subsidiary

provisions, he will have mastered, in some degree, the spirit of the law taken by itself. Until a scientific method of drawing an act of parliament shall be adopted in all cases, this is all that it is safe to pretend to,—for unless the statute embrace the whole subject matter of that branch of English law, it must be considered with reference to other laws that have been passed before on the same subject, as well as to the decisions that have taken place in the courts of justice. And here the work is not ended, the general principles and analogies of the law, statute and common, may be called in to assist in the instruction of the statute in hand. This is a consequence of the want of a recognized method of proceeding in all cases. The acts of parliament have now become, in another form, the decisions of the courts; more care is bestowed on adapting them to the notions of Westminster Hall, than to the plain law of reason, of which the law itself should be the counterpart and bodily resemblance to entitle it to the high distinction of being “the perfection of reason.” Our legislators are in fact slaves to the lawyer’s mode of legislating. They know not what they do; not one in fifty of them understands the body of words called an act of parliament; and though a man of ability devise a good law, by the time it is

clothed in its customary garb he cannot discern the features of his own offspring.

Such as the law is, it must be dealt with. It is not the present purpose to lead the reader through all the labyrinths that have been indicated without the pale of the act itself. It will be sufficient to shew him how to read the law, that he may know when he does not understand it. He is then in a condition to ask questions.

This is the position to which it is sought to bring the reader, in this first part of the Author's undertaking. In the next, it is hoped to display a regular, uniform, simple, and scientific method of writing acts of parliament, which any man of ordinary intelligence may read with the pleasure that comes from a ready understanding of a dry subject. If the foregoing observations have not manifested the force of the objections to the present system, the reader will scarcely fail to perceive it, when he has gone a stage or two farther. Rich as the specimens already furnished are, in the profuseness of unmeaningness, it would be impossible to convey to a reader, who has only an occasional necessity to refer to our acts of parliament, the wild luxuriance of confusion which characterises them. It is seldom that any one act abounds in all the defects.

The fault in some consists in want of arrangement, in verbosity in others, in an overlooking of the subject in a third class, in unnecessary and minute provisions in a fourth. But the grand pervading evil consists in this,—that there is no general plan or spirit, by which a construction of one act may be known by a knowledge of the rest. In some it rests on a reference to minute facts specifically enumerated ; in others on a reference to large principles and entire kinds of subject.

It is to be hoped that even this limited anatomical research will induce many to do their best to hasten the amendment of a system which disgraces the legislature and the judicature alike, while it subjects all to the insecurity in life, person, and property, which it is the professed object of all parties to avert. For though hitherto our researches have extended only to words, yet as these words are the signs of things, if the words be confused, the things which they represent will also be confused ; and until the legislature escapes from its present thralldom to ambiguity, it cannot be amended. The lawyers know no other language. They understand it more readily than their mother tongue ; and though an unknown tongue to the representatives of the people, they obsequiously give way. They know as

little of their laws, as the stranger, who must speak through a foreigner, knows of his own thoughts expressed by a faithless or inapt interpreter. But without laying more stress on this evil, it is now proposed to consider the remedies, by inquiring into the best method of recasting our laws, and by explaining the scope of a single law, and then will follow some exposition of the machinery by which a law should be *prepared*, and *made*, and *promulgated*, and *superintended*, and *enforced*, and, if need be, *amended*.

PART II.

THE ART OF MAKING A LAW.

- 1. THE FORM OF A LAW AND ITS CONSTITUENT PARTS.**
- 2. THE CHARACTER OF A LAW AND ITS MORE COMMON
CONSTITUENT PROVISIONS.**
- 3. THE CHARACTERISTICS OF THE LEADING DIVISIONS
OF A LAW.**



THE FORM OF A LAW AND ITS CONSTITUENT PARTS.

EVERY act of parliament consists of its title, the expression of the enacting power, and the body of the enactment, but there are commonly other adjuncts, which are not indispensable in all cases. Such are the preamble, provisoes, exceptions, schedules. To these it is proposed to add an analysis and index, and on all to make a few remarks.

THE ANALYSIS

Should contain a brief note of the contents of every clause arranged in the order in which the clauses follow each other. It should form a part of the act, of which it would give a very complete outline—the leading divisions being marked in a larger type.

This would be a great help to the bringing together in compacter form, all the parts of

the act : it would get rid of the necessity of making those constant references from one part of the act to another, which both complicate and lengthen it ; and by displaying the scope of an act, it would much assist in its construction.

It is almost impossible, with a good analysis, to draw a bad law. The clearness of view which it forces upon the draftsman, will compel a conciseness of manner. Where verbosity and unnecessary lengthiness are not the dishonest objects, they result from want of skill, which, in its turn, proceeds from an imperfect conception of the subject matter.

All ordinary provisions should follow in an uniform manner. The place of them, if they are in the act, should be known, that they may be quickly found, and that the construction may not be affected by an irregular sequence, which means nothing.

The peculiarities of an act will generally be found in its special enactments, which of course must follow the peculiarities of the subject.

THE TITLE.

The title is not always regarded as a part of the act. Yet in cases of emergency, where the doubt as to the construction cannot be determined by any other means, it has been held that recourse may be had to it for assistance, as to the title of a book. It is not safe, therefore, to pay no regard to it, especially as it may be made very serviceable in simplifying the body of the law.

The first care here should be that the title express the whole scope of the act. This is a test of its unity. If the statute be one of that class which may be regarded rather as appendages or codicils to former statutes than independent laws,—such as the amending and the explaining statutes, it should be so expressed in the title, which should be confined to the points to be amended or explained; and in the body of the statute there should be no new matter having no relation to that which is the subject of amendment.

If also the act be temporary that should be expressed in the title.

By care in these particulars, the body of

the act would be relieved of many minor dispositions that serve to encumber it.

For instance, the declaration that an act should, in all respects, be as effectual as before the passing of the one in hand, might be dispensed with, if the title expressed that the present act was one for substituting some provisions, and adding others to the former act, instead of using the word "amending," simply. The principle that the existing act was no further affected than the now passing statute expressly pointed out should be the allowed, as it is the natural inference ;—and but for the habit of specially saying so, it would be the case. Here is an instance of raising a doubt, by too express mention. The obvious import of expressions is destroyed, and we are taught to look for a precise enumeration of every particular case, even in its particular circumstances and relations, and if these are not foreseen and provided for in terms, to regard the law as inapplicable.

Again, the application of the act to England, or England and Wales, or Scotland, or England and Scotland, or Ireland, or England and Ireland, or Great Britain, or the United Kingdom, or any union of these qualities, might be marked on a prominent part of the act—say, beneath the title ;—and that should be regarded

as the extent of its application in point of locality, as the date of passing is regarded as evidence of that fact—without employing a special clause in the body of the act for that purpose.

A temporary act is so denoted in its title:—but here again there is no need to say that the law should be in force till the end of the then next session of parliament, in the body of the act, if it be denoted in the title.

To simplify the title it might be better to separate these particulars—to state, first the object, then its local application, and finally its temporary duration.

Moreover, each act should have a short title, by which it might be generally known. This is done with the bill in its progress through parliament, but usually dropped afterwards. There is precedent for this suggestion, as in the statute of frauds—the reform act—besides many others. The present mode of citing an act, by a reference to the year of the king's reign, is very absurd, and no help to the memory. On this point Blackstone says: “The method of citing acts of parliament is various. Many of our ancient statutes are called after the name of the place where the Parliament was held that made them; as the statutes of Merton and Marlberge, of Westminster, Gloucester and

Winchester. Others are denominated entirely from the subject, as the statutes of Wales and Ireland, the *articuli cleri*, and *prerogativa regis*. Some are distinguished by their initial words ; a method of citing very ancient, being used by the Jews in denominating the books of the Pentateuch ; by the Christian church in distinguishing their hymns and divine offices ; by the Romanists in describing their papal bulls ; and in short by the whole body of ancient civilians and canonists, among whom this method of citation generally prevailed, not only with regard to chapters, but inferior sections also ; in imitation of all which we still call some of our old statutes by their initial words, as the statute of *Quia Emptores*, and that of *Circumspecte Agatis*.

“ But the most usual method of citing them, especially since the time of Edward the Second, is by naming the year of the king’s reign in which the statute was made, together with the chapter or particular act, according to its numeral order, as 9 Geo. 2. c. 4. For all the acts of one session taken together make properly but one statute, and therefore when two sessions have been held in one year we usually mention stat. 1 or 2. Thus the bill of rights is stated as 1. W. & M. st. 2. c. 2., signifying that it is the second chapter or act of the statute, or the laws made in the second

Session of Parliament, in the first year of King William and Queen Mary."

If the acts of any one session were very few in number, it might not be unreasonable to cite them as above; but when they exceed a hundred, it is plain that it must give rise to confusion. This is a matter to be emphatically spoken of, seeing that it is one method by which the people are deprived of the knowledge of the laws, which it is presumed that they are to know.

The short title is almost indispensable. It would reduce the elaborate redundancy that is now occasioned by the recital of former acts to which a present enactment is intended to apply. Sometimes, as many pages are occupied by such recitals as could be well superseded by twice as many lines, with the aid of this improvement: it is not, however, brevity in itself, but facility of use that is sought:—and this by following out the practice which is in use when the law is in the course of making. It is then usual to call it by some short and significant title:—the business of the nation could not be carried on if all the fullness of a title page should be employed in common parlance. Why should not a course which the universal practice of the literary world, and that of the

houses of parliament in particular have sanctioned, be adopted in matters of most universal application to all the people of the realm ?

THE PREAMBLE.

Montesquieu says, in his excellent work on the Spirit of Laws, that when a legislator condescends to give a reason for his law, it should be worthy of its majesty. There are few preambles of this character. They are generally defective in two points: wholeness and truth. The true reason is not always given; and, if it be true, it is seldom the whole one.

Preambles ought never, indeed, to be made, except on great occasions; when not only the law, but its policy is to be changed:—it is absurd to usher in every small change by a pompous, formal mode of reasoning. It is enough that the legislature enacts: as it may be presumed that the legislature, if fairly representative of the people, was duly informed of sufficient reasons. But when great constitutional changes are to be made, or the policy of any branch of the law is to be changed, it is befitting both the dignity of the occasion and importance of the subject matter to state fully, and truly the principle of the

change. The appeal to reason on such high matters becomes a sanction in behalf of the law: it bespeaks behalf to what appears to be founded not on the success of party, or interest conflicts, but on the higher principles of justice.

For all ordinary occasions, the commencement of the act by "be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, on this present parliament assembled, and by the authority of the same that—" is sufficient. There can be nothing more ridiculous than to put in motion these state forces, on some petty show of frivolous reasoning:—reversing the order of production,—the mouse from the mountain. The following preamble of the law of escheats amendment act is a ridiculous specimen of this sort of anti-climax. It is also an instance of blending improper subjects in the same clause.

" Whereas great inconvenience has been found to
" result to persons beneficially entitled to real or
" personal property by the escheating or forfeiture
" thereof to his Majesty, to corporations, to Lords
" of manors and others, in consequence of the
" death without heirs, or the confiscation for treason
" or felony of a trustee in whom or in whose name

“ the same is vested, and whereas it is expedient
“ that the same should be remedied, *and inasmuch as*
“ *in order to avoid repetition, certain words are used*
“ *in this act comprising subjects, some of which accord-*
“ *ing to their usual sense, such words would not em-*
“ *brace, for the understanding of the sense attached*
“ to them in this act. Be it enacted by and
“ with, &c.”

Then all the legislative power of the three estates of the realm is put in force to fix the meaning of certain words. Such a conclusion from the premises first stated in the preamble is most miserable. This construction clause should have come last, and the second clause should have followed close upon the first part of the preamble. The expression of “ and whereas it is expedient that the same should be remedied,” is also useless.

It is usual, however, in the preambles, after stating the reason, to say in some such terms as the foregoing example, “ and therefore it is expedient to do so and so ;” but it is quite unnecessary, as the enactment is the sequence of the reason stated in the preamble.

Indeed it were almost a safe rule to assert that wherever the word “ expedient” occurs in a preamble, the preamble itself will be usually found worthless ; but as it is now used in nearly all preambles, the maxim would be too

large. It is, however, one of those terms which should excite caution. It may too be in most cases omitted, by saying after the statement of the reasons "for the remedy thereof be it enacted," and so on, or some such phrase.

The reason stated in a preamble should, as said before, be whole and true ; and the language should be simple, clear, and concise. If the occasion be great, it will dignify the terms ; and if it be small, as in the case of an amending act,—where it is necessary to state a reason, rather as a means of joining the new with the old law, than as a justification of the amendment,—the necessity of the case will be sufficient to give it all becoming grace.

In the latter class of cases, however, the introduction of the link of connection in the title is both more simple and natural.

The value of the preamble may be estimated by the fact, that the courts do not regard it as sufficiently true, to govern their construction of the other parts of the act ; though for other purposes it has been held to be evidence of matter therein referred to.

No reproach to a legislature could be more severe than this low estimation of its solemn statement of a reason, as the ground of its solemn acts ; but in truth, preambles, like oaths,

“In addition, be it in addition enacted.” The only occasion on which it can be used with propriety, is after the course of enactment has been interrupted by a proviso or saving clause, then the word “further” may be useful in calling the attention to the tenor of the coming provision.

THE BODY OF THE ACT

Consists of all but the title, the preamble, and the schedules. There are many parts besides the schedules which might as conveniently be made appendages instead of being wrought into the substance, if a similar good use were made of the schedules as is proposed to be made use of the title.

The procedure applicable :—the mode of enforcing penalties, the mode of pleading, the repealing of other statutes either wholly or in part, the construction or interpretation clause, clauses providing for the settling the amount of compensation of retired officers, the regulation of the mere routine of calling meetings, of borrowing money, of buying or selling land, and all other merely conditional or incidental particulars ought to be put in a schedule,

or supplemental part of the act. But as long as the present system lasts, the same object may, in an imperfect degree, be accomplished by arranging the act in such a manner, as that all these matters shall fall in the rear, and supplementally as it were.

The enacting portion of the act always forms a very small portion of it;—a few clauses only: the great body of the act, as now composed, is made up of collateral matter. It is this which deprives the act, however well drawn up, of unity, and often indeed makes that appear scattered and disconnected, which to a more practised draughtsman shall be the excellence of law-making workmanship.

This might be obviated by the insertion of all the main provisions of the act at its commencement, immediately after the preamble. The “whereas,” and the “be it enacted,” with its immediate sequence, would be connected, and the whole scope of the law would at once be manifested. Then should follow a clause to this effect, “and for the furtherance of the above object, be it enacted that the provisions that follow shall be observed in relation to the same; or that the provisions in this act, and the other acts in force, shall, so far as they are consistent, be observed in rela-

tion to the same, and that in case of inconsistency, then the provisions hereof shall be preferred."

The other parts of the act should follow, without disturbing the main body of provisions ; and if it should be necessary to have some connection with the main body, it could be accomplished by a short recital, at the head of each class of provisions.

Of the want of right conception of the proper order of an act of parliament the Fines and Recovery Act of last session furnishes an instance in some degree similar to that quoted in the case of preambles. It begins in good taste without a preamble, the title having explicitly and simply stated the objects of the act. "An act for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance in Ireland." It then proceeds with the usual enacting terms :—"Be it enacted by and with," etc. "that in the construction of this act the word "lands shall extend to advowsons, rectories," and so on, with a long list of words of similar ambiguity. The second clause contains the substantive matter of the enactment, that no fine shall be levied after a given time.

This is a bad conception ; and the act, though good in object and spirit, in some other

instances shews the same fault. Doubtless the writer felt that as the construction ran through the whole act, it was necessary to set out with understanding it, and therefore, at the expence of the workmanship of the law, put his interpretation clause where it was likely to receive the earliest attention; but it would have been more artist-like, to put in the first place, the substance of the act, and not a mere explanation. If there were an analysis at the beginning of our acts, and the construction clause were put always in the same place in the schedule, such difficulty would not arise.

This is but a single instance. The fault is common to our statutes. The draughtsman is puzzled, the legislature is puzzled, and the lawyers are puzzled, because the present frame work of a law forces the jumbling of things, and because the jumble is farther confounded by the odd structure of clauses, and the involution of phrases, and the accumulation of words.

If the improvements here suggested were adopted, the body of the act, except in a few cases, would usually be a simple enactment on one point, or one branch of a subject, or on the whole subject,—as plain as a resolution of the legislature, which indeed it should be, with the mere addition of the terms of enactment at the
of the act.

PROVISOS AND EXCEPTIONS.

A proviso is used chiefly to express that something is not within the act, or the clause, which, by possibility, might be supposed to be within it from its kindred nature ; while an exception is employed to save from the operation of the law an object of the same species, which is included in terms in the same enactment.

Both the proviso and the exception ought to follow immediately upon the part of the act, on which it is intended that either should operate. At the end of the substantial provisions, if it is meant to operate upon the main body of the act ; at the end of the act, if its operation is to extend to the whole of it.

But a proviso should never be used, unless there is a reasonable probability of its subject matter being brought within the terms of the law. It destroys its simplicity, and raises a question where none might be raised. If other things, bearing a similar relation to the subject matter of the act which the matter of the proviso bears to it, be not also expressed in the pro-

viso, it may have the effect of raising the supposition that such other matter is included in the act. If there is no probability of such surmise, then in both cases the proviso is excessive and useless.

Exceptions deserve great attention in an act of parliament. They often mark the character of the act more than its own terms, and in modern legislation sometimes exceed in scope the rule. It would be good always to enquire whether they might not exchange places with the latter.

THE SCHEDULES.

In the present state of our law, the office of the schedules might be made of most important use. Here should be put all incidental matter, all mere modes of proceeding, all regulations, lists of the statutes repealed wholly or partially by the act, lists of penalties, the glossary or construction clause, and other mere incidents that could not be said to be part of the substance of the enactment.

They should however be printed in a more

compact manner than is now usual : as much as possible should be brought under the eye at once. This is no martinet regulation, but one of the most practical use. A type beyond a given size, instead of giving clearness, confuses by scattering, and this is especially the case with that used in printing the schedules of our acts of parliament. It may be proper that the dignity of the law should be signified by a majestic type ; but to clothe the mere attendants in the same garb must detract from that object. As it is therefore fit neither for dignity nor for use, it would be better to use a small, clear, compact type, that should bring much matter within the eye's range, without crowding.

The subject of the schedules being noticed in the analysis, and each schedule being numbered or lettered, there would be no confusion. If there should be occasion to refer to them in the body of the act, the expression " as in schedule 1 or A," would fully serve the purpose.

The order of these schedules should be uniform, though that must in some degree depend on the arrangement of the Act.

THE INDEX.

Every act of any length should be accompanied by an index, as well as by an analysis. The latter would give an outline of the act in the order of its clauses, but the index would be more full, and, in consequence, would be most useful to our hurried legislators. It should point out every special person and object affected by the measure. In a little while, the least learned layman would understand of what component parts an act of parliament should consist; and though an objection would be taken by some, that many would read the analysis and the index instead of the act, it may be supposed to be better than that they should read nothing at all, which is now commonly the case. Besides, if by the exclusion of every unmeaning and unnecessary word the English language were introduced into our acts of parliament, it may be presumed that every member of the legislature who has a due sense of his responsibility would give some thought to what the most ignorant of his constituents, may, by possibility come to understand, especially where their interests are concerned.

The index given in the appendix will give a general idea of the possible contents of statutes, and of the points to be regarded in the investigation of them. A little experience would teach what parts are appropriate to one statute, and not to another; and many of them, it is hoped, will be rejected from the greater number of our statutes at no distant time, according to the suggestions which are made in succeeding sections of this work.

If the frame of our acts were systematical, the analysis would be so too; the index in that case, and even now in very short and simple acts, might be dispensed with, and the more so if to the general outline of the analysis there were added a more particular abbreviated statement, like the arguments sometimes put at the heads of chapters in books; or the index might be confined to the mention of persons and things necessarily scattered over the whole act.

THE GENERAL CHARACTER OF A LAW AND ITS MORE COMMON CONSTITUENT PROVISIONS.

Acts of parliament are in their general nature, enacting, or directory, or explaining, or amending, or declaratory.

The enacting create something that did not exist before :—an office, a duty, a prohibition. The constituents of that office ; the moral lawfulness of that duty and its practicableness ; the harm of the thing prohibited ; the means of enforcing an observance of the prohibition must be taken into account.

The directory deals with the incidentals of an enactment. It is necessary to consider what it is, what new circumstances have arisen to make the old powers ineffectual, or to complete the object of the new enactment,—if such it be.

The explaining is confined to solving doubts. The principle on which these doubts rest must be regarded.

The amending supplies omissions in former enactments ; or changes the enactments where they cease to be proper.

The declaratory is employed to give definitiveness to the unwritten or common law, or the statute law, where the application of either to new circumstances is doubtful, or on a point of controversy on other grounds.

Whatever may be the character of the object, it should be *One* in kind. The mind of the author of the law should be charged with all the particulars of its nature, and the relations which it bears to other parts of the system of jurisprudence : and that object, in

clearness of unity, he should make apparent in the whole frame of his law. Its title, its preamble, its body, its provisions, should all breathe the same principle. He must not make it an opportunity for touching some other point, however it may want amendment, even though it be in some degree kindred to his subject, unless his law be dealing with the entire genus to which the point belongs. There is no other way of rescuing the measure from all possibility of misconstruction, and indeed, of avoiding the probability of giving just cause for it.

Many acts combine all the foregoing characters. In some cases, as where a general law is to be passed, governing the whole of a branch of affairs, this is proper. But then the law should be so arranged, as to preserve in each section, the unity of its respective object: the test of this is found where the act may be divided, without an inconvenient disconnection into separate laws.

As this course of proceeding—the mingling things not quite kindred in the same act—is sometimes forced upon the mover, by the state of feeling in the legislature, which would render it hazardous to attempt to bring in separate bills for the same class of subjects, since some might be rejected and others passed,

while the value of one depended upon its passing with the other, the draughtsman must submit to his exigency, but he may do so with much less inconvenience by observing the rule just mentioned.

Both the particular and general form of the law is determined by its subject, and this has regard to persons, official and non official, to trades, to taxes, to things, to times, to places, the whole constitute the object which before a man proceeds to draw a law, he should clearly understand.

It is not enough to draw down from the receptacles of precedents in the like cases, forms of the usual workmanship: a good draughtsman should have no recourse to forms but to preserve an uniform style. The expression here, to be good, must emanate directly from the mind, charged with the whole scope of the object and its constituent particulars. His practised skill will give him all the use of precedents, without that tameness and servility of expression, which must result from the habitual practice of the copying system. There will be as much difference in an act of parliament so drawn, as between the tawdry copy of a copy, and a spirited picture drawn from nature. The want of this skill often comes from a limited

experience in a particular department of law making.

The first thing to be taken into account is the present state of the law, then the general enactments, directing, or explaining, or amending, or declaring as the case may be. After which follows the incidental provisions, and the powers for carrying the law into effect, with the personal agencies or officers by whom it is to be done—the superintendence of these agencies—the judicature, whether ordinary or extraordinary, by which it is to be enforced with its procedure, whether regular or summary, and the penalties or other modes of punishment for disobedience to the law. To speak in the language of the illustrative metaphor of the work: the object being first obtained, the forces to be employed must be computed, and the machinery by which it shall be effected, adjusted accordingly.

It is in vain simply to direct or forbid. There must be somebody to whom the direction shall be conveyed—some personal agency: and the prohibition as well as the direction must be followed by some punishment, in case of disobedience. It must be something too, that the party can do or abstain from. He must not be told to move a mountain, or

abstain for a month from sleep: and the same principle holds, not only to what cannot be done by any body, but also, to what would be highly inconvenient generally. Having ascertained the moral lawfulness of the direction and prohibition, and its physical practicability, the selection of the agencies, physical and material, also requires skill and care. An officer must be fit for his work. He must be paid for his fitness, or else, in this free country, he will not do the work. He must have a motive to serve, and zealously, and the chance of his want of zeal, or neglect, or want of skill, must be provided for in appropriate superintendence, publicity, and punishment.

All these leading objects must be regarded in addition to the different parts of the machinery, including the very bolts and screws of the system, which may be necessary to connect them together in a practical form. It is pardonable to dwell on these minutæ, as there have been legislators, not unlike visionary patentees, who having specified some aery phantom of their imagination, have thought their inventions could realize themselves by the magic virtue of the Great Seal affixed to a quantity of blotted parchment.

The chief general provisions are those which require security for the performance of the

law; which will be found in effective superintendence, in publicity, in prompt adjudication of disputes, and in dismissal for negligent, inefficient, or bad service, and in taking personal security,—in all money cases certainly—and in a more vigilant selection of functionaries. So far as to the agency: the motive forces in other cases must be found in penalties and disqualifications. All these topics will be discussed more at large hereafter. It needs only to be observed of superintendence, that it is a principle to be borne in mind in framing every law. There are two prominent instances of the want of it in the present state of our turnpike trusts, which are all loaded with debt, and in the state of the poor laws. Nor indeed are the concerns of our counties less remarkable instances of the want of a general superintendence. Since it is barely possible that many of the evils ascribable to that cause, could have been so perseveringly imputed to other causes, had the financial condition of the provinces as such, been placed under one superintendence. And here a distinction of a most important nature must be drawn, between superintendence and concentration. The respective uses of a local administration, and of a general concentrated administration, might be combined by a regard

to the principle of superintendence. This latter point should be limited to a vigilant watching of the exercise of the permitted functions, according to the principles of the general law, in which the jurisdiction has been conceded by the general legislature, to what may be styled the local legislature ; and to a reporting to the general legislature, the results of the systems, with the peculiar divergencies required by the peculiar circumstances of the particular quarter of the country. Had the turnpike-trusts, to which allusion has been made, been subject to some such superintendence, their present encumbered state would not have happened.

Another important element of the mechanic forces of our legislation, directed to secure the performance of the law, has been *the oath or declaration*. Anciently the oath was exclusively employed ; latterly the declaration has been substituted in some cases. It would be worth while to inquire in each case where an oath or declaration is proposed to be adopted, whether the general moral force of the law is not weakened by the contrivance :—it ought to be a general practice of law, *as it is the principle of law* as well as of common sense, that he who violates the trust of his employment is amenable to punishment.

The effect of the partial use of the oath is to diminish the force of those engagements, in which such sanction is not employed. It makes gradations and modifications of truth, that must be hurtful to public morality, by exposing it to habits of nice casuistry.

The *limitation of actions* against particular official persons, and the *regulation of proceedings*, are also matters that commonly form parts of our laws. There ought to be some very special reason why any such peculiarity should be established. The remarks on exceptions in a former section apply with equal force here. It would be among the chief uses of an analysis to rid our laws of these unseemly peculiarities. This and the subject of procedure generally will be discussed elsewhere. It is yet necessary to say here that, as the law now is, the peculiar procedure by which it is to be enforced must be a subject of particular regard. The usual questions are, whether the new enactments are enforceable by the established modes of procedure, or whether recourse to them is so dilatory, or expensive, or uncertain, that the proposed law would become a dead letter, if an additional means were not specially provided for the case.

There is another topic, which there will be

no after opportunity of discussing, viz.: *the limitation of place* to which the proposed law is to be exclusively applicable.

This is one of the most important points to be regarded in modern legislation. The principle of making as little change as may be, has led to the production of the greatest change. The laws of Scotland and Ireland have been strengthened in many of their peculiarities, since the respective unions between England and these countries. From step to step, each adjusted according to the existing state of the law of the particular country :—the divergence from the law of the rest of the empire, has been more marked until at last the assimilation of those laws has become, in many cases, almost impracticable. This evil has resulted from different members being in charge of the laws for the different countries, instead of being in charge of particular subject matters of the law—so that if an Irish, a Scotch, or even an English law were produced, the members, who represent the other parts of the kingdom, think not that it belongs to them. It would seem to be no bad practice, where a law is not intended to apply to all parts of the country, to recite the reason why it should not.

It is manifest that the legislation of this

country is greatly augmented in amount and labour by this method of proceeding: whilst one part of the country is neglected during the labours that concern the other parts. And if it should happen that the public mind is withdrawn to other matters, before the law that is applied to one country can be extended to the other, the latter may be altogether, or for a long time, deprived of the benefits that the rest of the people enjoy.

Besides, the regards of the members of the legislature lose that national character, which they ought to have. It was well remarked, on a recent occasion, "that it was strange that when we talked of a legislative union, we legislated for the three kingdoms separately instead of for one." Of the acts of last session, about 28 related to England exclusively, 7 to Scotland exclusively, 19 to Ireland exclusively, 3 to Great Britain; in short, nearly two-thirds of the laws of the session, which amounted to 96, had a peculiar local application.

So far as to the constituent points that are to be generally regarded in framing our laws. We have now to consider the specific characteristics of the leading divisions of the law.

THE CHARACTERISTICS OF THE LEADING
DIVISIONS OF THE LAW.

It has been said before, but it is a matter on which it is scarcely possible to lay too much stress, that in order to make a good law, it is not sufficient to take down the form of a precedent of the same nature ; but the whole scheme and spirit of the law must be borne in mind. All the various contrivances by which it is sought to enforce the enactments, those which are general, and those which are special must be kept in view ; and a selection made of such as are apt and indispensable. The leading divisions of the law are :

1. The constitutional laws.
2. The official laws.
3. The municipal, or police laws.
4. The civil law.
5. The criminal law.

The constitutional laws consist of the statutes relating to the royal authority, the legislature, and the offices of the high public functionaries.

The official laws relate to the establishment and duties of the different departments of the

public service, civil, military, naval—to the departments of the revenue, and the imposition, collection, and management of the taxes of which it is composed.

The municipal, or police laws include all statutes relating to the preservation of the public peace, and the administration of those statutes, with duties of the officers connected therewith, whether sheriffs, justices of the peace, magistrates, coroners.

And also all laws relating to the management of local affairs,—the roads, the lighting, draining, and other matters of a merely local nature, vested in local commissions.

The civil law, as it is commonly called, concerns the creation of rights, whether connected with the person, or with property, but chiefly in the latter respect. The administration of that department of the law, and the regulations and pre-requisites by which those rights are established.

The criminal law concerns chiefly the prohibitions of all offences against the state, and the exercise of the public authority, or the life, the person, the property of all persons within the realm. The administration of this branch of law, and the preventive or police regulations connected therewith.

Each of these different descriptions of law requires different modifications of the constituent elements of a statute. In structure and phraseology, and the general form and character of these statutes, there is no material difference; but the provisions must obviously correspond with the peculiar objects and modes of proceeding of the divisions of law to which they belong. This, however, comes within the province of the legislator, rather than of the professional law-maker:—at least, according to the character which persons in that capacity have usually held, which might be more aptly translated into “phrasers” of other men’s notions. But it is not safe for any person who would pen a law to be ignorant of what the general body of the law consists, nor of the higher principles by which legislation should be governed. It has so happened that, through this most important of all public functions being executed by mere practical lawyers, the law has taken its present servile form—neither embodying the spirit of English jurisprudence, nor ameliorating that spirit by a tone of comprehensive principle. But, on the contrary, what was good in English law has been narrowed to the limits of ignorance, and what was bad has been made

worse by the same proceeding. If a man would, according to law, give to another an orange, instead of saying :—" I give you that orange," which one should think would be what is called in legal phraseology, " an absolute conveyance of all right and title therein," the phrase would run thus :—" I give you all and singular, my estate and interest, right, title, claim and advantage of and in that orange, with all its rind, skin, juice, pulp and pips, and all right and advantage therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away as fully and effectually as I the said A. B am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away, with or without its rind, skin, juice, pulp, and pips, anything hereinbefore, or hereinafter, or in any other deed, or deeds, instrument or instruments of what nature or kind soever, to the contrary in any wise, notwithstanding," with much more to the same effect. Such is the language of lawyers ; and it is very gravely held by the most learned men among them, that by the omission of any of these words the right to the said orange would not pass to the person for whose use the same was intended. Other lawyers are of a different opinion ; but as the mass are not so enlightened

such words are inserted, lest by possibility any mischief might come through the omission. Lawyers who know better, have acquiesced, from not daring to deviate from general usage, lest smaller men might raise a question on the peculiarity. The same fear has prevailed in making statutes. The legislators have succumbed to the lawyers.

In the suggestions for a statute of directions and constructions in the last section, the principles common to most statutes, and in the standing index in the Appendix, a summary of usual constituent points will be dealt with.

We have now to consider cursorily the leading objects of each of the foregoing divisions of the law.

THE CONSTITUTIONAL LAWS.

These are not of ordinary occurrence. The reform act is the last remarkable instance :—and putting out of view the scope of its principles, it must be observed that it is a most lamentable specimen of English law making. There circumstantialities are so bound up with principles, with which they have no essential relation ; and principles are made to depend so often on circumstantialities, that the mind can fasten

on no firm hold. As a question of principle, it leaves every thing open to fresh discussion. In all laws of this nature, the declaration of principles should be simple, and forcible through its simplicity: and all mere regulations conducive to the main object should be made subordinate in appearance as well as in fact. This principle is most important. It is the only way of escaping from a common source of error in English law and legislation—that of regarding the accessaries, and not the principle, as forming all the elementary conditions of the precedent. Of this class of law, are disfranchisement acts. These, too, need an intelligible principle that shall relieve such questions from the embarrassment that results from the different states of party strength, whenever they may happen to be mooted.

It would require too much space here to enter upon the discussion of the elements of this branch of law. As yet they are far from being commonly understood to the full, by the greater number of persons of any party.

THE OFFICIAL LAWS.

These are by far the most numerous. There are many which are renewed annually, as the mutiny Act, and those which relate to the

ways and means. We must distinguish these laws as they relate to the public civil service:—the public forces, as in the army, the navy, the ordnance, the militia, the revenue departments:—the ways and means, the debt:—also the public peace, morals, religion, health:—the public works, internal communications, such as roads, canals, railways.

The Ways and Means and the Appropriation Act relate to the application of the funds in hand, the issue of Exchequer Bills to meet future demands, and the appropriation of the supplies granted and the money raised. To regulate the exchequer bills, there is a standing law; it is only necessary that these bills should follow that law, and that no more money be raised beyond what is necessary for the service, and that whatever is granted, shall be applied to the specific purposes for which it is granted.

The public civil service takes a wider range. All the public offices are under the control of the Treasury, with respect to the extent of the establishments and their expenditure. This, in fact, gives the Treasury an entire control over the whole public service. It is usual to give this power to the Treasury in express terms; but it is not necessary, as that is the very principle of its existence, and should be pre-

sumed, if not taken away by express terms. But in matters not connected with the extent of the establishments and their expenditure, a control is sometimes given to another department of the service, as to the King in council, or to the heads of a department, as to a Principal Secretary of State, or the Commissioners of the Admiralty.

All the matters connected with the collection and management of the revenue, are under the control of the Treasury. But all matters connected with trade, that do not affect the mere collection and management of the revenue, belong to the Board of Trade: yet, by an odd distinction, the excise laws are under the superintendence of the Treasury and the customs laws are under the superintendence of the Board of Trade.


The law, in these respects, will never obtain a simple, uniform and comprehensive character, until the whole scheme of public economy is adjusted. The departments of the public service should be regulated, their provinces defined, and general laws passed constituting the powers and restrictions under which they should act. The account keeping of the service ought to be subordinate, though conducive to this purpose.

The revenue department is the most fruitful

source of the legislation. The constant efforts to meet the attempts of traders to evade the law, and the changes in amount of the taxes and in the mode of raising them produced by the general endeavor of the public to relieve itself of its burdens, render the frequent changes necessary.

The peculiar severities of this class of legislation, as well as its frequency, call for especial attention. The superintendency is most effective, the penalties excessive, the modes of proceeding summary, the discretion of the public officers large, and its influence on enterprise, and public morals very powerful: and yet except by the parties most nearly affected by the particular tax, little regard is paid to the general character of these laws. Want of efficiency is certainly not their defect: the observation of legislators is therefore only necessary to bring the efficiency down to what is essential for the purpose; for tax-gatherers, in their earnestness to secure the object of their calling, are apt to be severe taskmasters. This is illustrated by the constant efforts of our revenue commissioners to retain the most rigorous measures, even where they had ceased to be useful.

It may be laid down as a rule, that fiscal laws must be restricted to the means indis-



pensably necessary for the raising the revenue. Like all laws trenching on the rights of industry and property, they should be confined to their object. These laws should declare the amount of the tax,—on what,—the mode of collection,—and the precautions so far as they are indispensable for preventing any fraud on the revenue. These precautions too, must bear as little as possible on private industry and property. Their particular nature cannot be predicated, as they must follow the ordinary processes of the trades to which they apply; or such as the ingenuity of the smuggler may invent to evade the law.

The more general conditions of such laws, seem to be the control of the commissioners by the higher branches of the executive, as the treasury, and by the legislature; and also a sufficient control over the judicial acts of the commissioners and the prosecution of offenders in other jurisdictions.

The penalties are now of the most arbitrary kind: fixed at a very high scale, so that if they should be enforced, the offender would be ruined. This part of the fiscal law requires close attention. It would seem that an offender is now completely at the mercy of the executive. All the advantage of fixing a penalty is destroyed in these cases. The certainty supposed to be

obtained by fixing a maximum, becomes an uncertainty from the possibility of accumulating penalty upon penalty, through a repetition of prohibited acts constituting the series of operations included in the process; so that the maximum is often only limited by the power of the executive to ruin the offender. This may be necessary, but such powers should be subjected to the most vigilant control of superintendence and publicity.

The other considerable laws which are passed concerning the public revenue, relate to the management of the land revenues. They require especial watchfulness. The objection to dealing with a fund beyond the more direct control, by annual votes, of parliament which has been made against other revenue services applies here with equal force. Nor does this department appear to be subject to any sufficient audit or control by the treasury.

Besides the regular machinery for the public service, it has grown the fashion of late years to employ commissions for specific purposes, in aid of the departments of the executive. It is clear that if the economy of these institutions in the larger sense of that term were good, such extraordinary appendages would not be necessary. These commissions have been very ineffective, partly from want of su-

perintendence, partly in consequence of the commissioners being men too much engaged in pursuits, whether official or otherwise, to admit of a close attention to their duties ; sometimes because the pay has been dependent on the length of the time the working of the commission shall occupy, and sometimes because the commission has been gratuitous, or the pay too small. Some or all of these causes have contributed to make our commissions very inadequate. An inquiry ought to be directed into their nature and number, and all permanent objects should be delegated to a part of the established machinery of the executive.

All commissions being in their nature extraordinary, the laws relating to them partake of the special character. There must be a distinct appointment. The functions and the powers must be defined, and all the procedure, legal or official, marked out with care.

The law as to this matter, as well as to some others, ought to be general ; but it is not so,—and the consequence is much of the specialty character of our legislation.

The points that require to be specially observed in acts of this nature are : 1. That the commission shall be temporary. 2. That it

make periodical returns of its proceedings.

3. That the returns be laid before parliament.

4. As to their mode of payment, whether a sum on the whole inquiry, or a stipend.

The first point is essential in order to bring the conduct of the commission in a specific manner before parliament. The regular records of proceedings, and the returns to parliament are useful, rather as furnishing material for a complete discussion, and operating as an indirect check, than as a very effective method of control, for documents of this sort are now so numerous, that little attention is paid to them.

The entire subject merits full discussion. This sort of machinery has become so large a portion of the executive, that the point is fairly raised whether retrenchments in one direction are not compensated by additional charges elsewhere. At all events, it is plain that the mechanics of the executive is little understood, or slightly regarded in practice. There is little use in making large reductions at the expence of efficiency, though the reductions may possibly be best made where they have been ; what is suspected is, that there is a want of coherence and design in the execu-

tive departments, and a corresponding lack of suitable skill. The commissions are put forward as a test.

By way of recapitulation. The laws affecting the public departments consist mainly of regulation:—the policy is to limit as far as possible the discretion of the public servant.

If an office is to be created,—what are its objects and its powers,—the class of officers—in whom the power of appointment and of dismissing is to rest,—the pay,—the pension and superannuation? To what department does the state responsibility of its control belong—to the treasury, the admiralty, the home department, the colonial, the chancellor?

There must be provision for the record of its proceedings, the communication between the office and its superior, and between the office and the legislature.

Then, what are the disabilities,—what the capacities?

The duration of the office,—whether for life, at the pleasure of the crown, or the heads of departments?

If for life, whether provision be made for removal on an address from both houses of parliament.

The pay—at what rate. Compare it with the pay of other offices in an equal condition.

Whether to be fixed by parliament or by the treasury.

There must be provision for the regulation of matters, and for the form of doing them.

Many of these things,—as the principle of payment, of superannuation, and of pensions, —are properly the subject of a general law, and might be extended.

MUNICIPAL AND POLICE LAW.

The machinery for the conservation of the peace, and the execution of the law is considered in that division of this book, which treats of the enforcing of the law.

The first principle is to discover whether the thing to be prescribed is not already within the scope of the commission or the executive functions of the law, and if not, whether being of a special nature, it is not analogous to something already committed to them:—if so, it is better to make the rules in both cases, as much as possible alike, that the officer may not be troubled by a great diversity of modes. And he is to be told the thing to be done shall be done exactly as prescribed: whether the persons who be employed will in the

very letter of its terms, or there shall be a judicial discretion. It is probable that much of the legislation here is unnecessary,—that it is included in what exists,—but owing to the want of any competent authority, to guide those who are not so quick-minded as others of their fellow magistracy,—no minister or judge to whom they may appeal for directions,—where the rule is doubtful, it has been supposed to be necessary to explain every thing, so that doubt shall be impossible; and the result has been what it is usually with young children, that excess of explanation has made more confounding. Instead of aiming at mere simplicity, of stripping away all that was not of the substance, there has been added the explanation of every man's doubt, and naturally with no more advantage than is illustrated in the trite fable of the old man and the ass, making the law more ambiguous than ever.

The law is not made plain by an excess of words or provisions. On the contrary, a specific mention in one place and a silence on the same point in another weakens the force of the general principle. It establishes a peculiarity in terms and, in unlearned heads, a peculiarity in force.

But it must often create doubt and difficulty with the learned, when coupled with other un-

usual things, notwithstanding the known rule that the expression of things which are silently present is of no effect. The mind must take account of what is obtrusively thrust upon its notice; and a mere non-essential thence destroys in degree the force of the pervading principle.

The courts and all persons ought to keep within the letter of the law. But that letter should be the same for the same cases, and ought never to exceed the occasion. The men entrusted with the judicial interpretation of the law ought not to be regarded as persons incompetent to understand the letter, without a supplement exposition; nor indeed in any case can it be assisted in that way. The most learned and the most simple will most easily comprehend a simple idea conveyed in simple and few expressions.

In the general municipal law, as distinguished from special matters of minor police, there is much of justification for peculiarity. The circumstances of different localities are so diverse that a general law would seldom be applicable, and if attempted run into particularism. The general law ought to be confined to the most general particulars leaving the minor points to be adjusted by the parties more immediately interested. The difficulty

here consists in the selection of the proper body to exercise the function of local legislation, the qualifications of the local authorities, the qualifications of their constituents, what functions they should exercise in ordinary, what functions they should not exercise without the sanction of the constituent body, and in what manner that sanction should be obtained.

These are some of the particulars of the general law which can be determined by the experience of the past. Every local commission and body politic, and every body acting as trustees for public interests, (the same rule with some modifications might be extended beneficially to private trustees) should, as a first condition of their office, keep the following documents :—a record of all their proceedings, a general rent roll, an annual statement of all receipts and disbursements, a list of all private acts of parliament concerning the body; and, where the office was not held by an individual, a particular person should be appointed to perform the duty.

The mode of borrowing money should be declared with a provision never to be lost sight of, that whatever may be borrowed, should be repaid within a given time by instalments, and that no more should be borrowed till the whole, or a certain portion should have been repaid.

The publication of accounts either in a separate form, or in a local paper, should also be an indispensable condition.

A few well digested statutes would accomplish all that is proper for the general local government of the different parts of the country: regard being had to the distinguishing character of the cities and towns.

But there is a class of minor police regulations, which abounds in practical oppressions. It is here that the *Cacoethes Legislandi* works with most fearful and unresisted energy. The petty and peculiar objects of each law, accompanied by petty and peculiar regulation, baffle the attention of the most indefatigable of sounder legislators. The penalties are the touchstone of this matter. A very useful work, called the Book of Penalties, was published in the course of last year. The inspection of that book will demonstrate the absurd nature of our penalty system. There is, for instance, an abundance of enactments forbidding the adulteration of different articles of food. But each enactment is directed against a single kind: and each is provided with its peculiar penalty. Sometimes it is £500, sometimes it is £200, sometimes £10, and of many other grades of amount. It is true, the larger penalties are applied to cases in

which the revenue may be defrauded. Now, what is the principle in all these cases? Human life or health is injured,—a crime is committed: why should not that be prosecuted by indictment and punished like any other criminal act? Is it worse to make money by picking pockets, or by burglary, than to do the same by poisoning. It is but a craftier mode of doing what greater cowardice or superior cunning teaches may be done more safely. The proof that should ground the infliction of the penalty, would sustain the indictment. There are other inconsistencies of a similar nature. But this matter of penalties must be separately considered in a subsequent chapter. It goes to the root of one half of English legislation.

THE CIVIL LAW.

This portion of the law is undergoing many signal improvements, under the guidance of the late attorney-general. His acts have usually the merit of singleness of object, and their language, though it admits of some retrenchment, is perhaps as good as parliamentary usage will admit. The objection to the pre-

dominance of the lawyers, is not so great here. This branch of the law is necessarily so bound up with the abstruseness of the real property law, resulting from its origin in the bygone feudal system, and the ancient fictioncraft of our old judicature, that none but lawyers could satisfactorily grapple with it. At all events, to them must be entrusted the work of preparing the way; for the rule, that the general tone and true spirit of the law must be borne in mind in every single enactment applies here with especial force. It requires the greatest caution, to prevent a new enactment becoming a mere isolated law, separated from the general system of jurisprudence, or worse, clashing with it.

But, be the merit of these laws what it may, it is incumbent on all legislators to understand them; and, if they do not, they may fairly presume that the body of the people will be in no better condition.

This is not difficult, if a little of the formality of the law be got rid of. An example of this sort is given in the case of the Act for the Apportionment of Rents, Annuities, and other periodical payments, of last session.

The state of the laws as to assurances of all kinds, and the want of a general registration, with the diversities in the jurisdiction of the

courts, and the various natures of property which is called real, under different tenures, and the various sorts of personal property, with the manifold characters which the holders of it may have, render the task of reform, in this direction, more complicated than it might be, if it were proceeded in, in an orderly manner, and the proceeding begun at the right end.

Much, however, of the complication may be removed by a good glossary of terms, connected with this department; the selection of words, which shall have a generic character;—shewing what they include, and what they do not.

In the act of last session, amending the law relating to the escheat and forfeiture of trust property, to which we have already referred, an illustration may be found.

The law relates “to all property capable, under the existing law, of being escheated or forfeited by reason of the trustee or mortgagee dying without an heir, or being convicted of some crime.” It might be supposed that the description quoted, which is not in the act, would have been sufficient; but that is not so. In an over elaborate construction clause, which explains more than arises under the act “Land,” is construed to refer to “any manor, messuage, tenement, hereditament, or real property, whether freehold, customary, copyhold, or any

tenure whatever"; "Chattels"—to "personal property of every description, capable of being transferred or disposed of otherwise than in books kept by any company or society, or to any share thereof, or interest therein"; "Stock"—"to any fund, annuity, or security, transferable in books kept by any company or society established, or to be established; or to any money payable for the discharge or redemption thereof, or to any share or interest therein." And then in the body of the act, "lands, chattels and stock" are used over and over again to represent the aggregate of these.

This is but an instance. It would be worth while to inquire whether this might not be obviated. Gather together all the varieties of property of which we have knowledge. Let them be classed according to their nature. Gather together all the characters of persons by which such property may be held, and arrange them. The task is a limited one—and not only limited, but more or less done in law books. Find the largest term that will include every genus and species of person and property:—and then, strictly use these terms where they are intended to apply:—if to all kinds, the largest term; if to a species, its appropriate term; if to one or more individuals of a species, then their individual names; but surely there should be an end

of marshalling, rank and file, all the sorts of things that may be, as field-marsahls, generals, lieutenant-generals, colonels, lieutenant-colonels, majors, captains, lieutenants, ensigns, cornets, serjeants, corporals, privates, and all other persons, of whatever rank or degree. Such a plan might do once in a way, but to repeat it in every clause, and, sometimes, in every sentence of a clause, until one almost grows giddy with the going round and round with the same set of people,—there is nothing like unto it, but the trooping of soldiers at the theatres; they march right and left, hither and thither, and then all round, before they stand still, or make their way out: but, however dramatically well done, it is always ridiculous; and so are most of our acts of parliament, for the same reason.

Next to the want of the foregoing authorised glossary, is the difficulty of finding an appropriate tribunal for the adjudication of new matters. The favourite one is the court of chancery, and, however much that court has been condemned as an engine of oppression, the legislature, every session, sends new matter to it. In all such cases, it is proper to inquire whether the existing methods are not sufficient, and why not—for the answer will supply a test of the efficiency of the existing forms of proce-

ture in the courts. There ought to be a return, annually, of all petitions upon special statutes, arranged according to their kind :—and also of all Causes that have sprung from the same ground, owing to the mode by petition proving unequal to the purpose. The oddity of this favourite method is that it is supposed to be summary : but it is far from being so, while the expenses are much aggravated through the clumsy form of investigation by affidavit, and the practice of everybody who has any interest in the matter, appearing by counsel. There may be no better plan ; but this is a bad one.

The orders and regulations made by the court of chancery in relation to these summary matters, which are in the nature of supplements to the statutes by which they are allowed, ought to be returned to parliament. A law may be defeated, or too much enlarged by the operation of such orders.

There is no reason why the legislature should foster the verbiage that disgraces our system of conveyancing ; yet when it prescribes a deed, it is seldom better than those in practice ; and the exceptions are found in those cases where a public body is concerned, which serves to shew, not that the elaboration of wording is indispensable, but, that the matter

is overlooked where there is no direct interest to the contrary. This ought to be an especial object, as much of the cost of transferring property, and all the ignorance of parties as to what they are about when they do, arise from this cause. Not one person in a hundred knows, except from what he is told by his attorney, what he does when he makes a deed; and if he have had the misfortune to mis-state his instructions, or the attorney has misconceived his position, there are cases where he may have laid up a harvest of litigation for the benefit of his family. If the legislature would make the laws intelligible, the lawyers could not find a pretext for pursuing the present course, even where they may have such a dishonest purpose.

It would be impossible to enumerate all the conditions of real and personal property, or the general state of the law regarding persons, and associations of all kinds. It is enough for the present to indicate the different character of the subject. There is, however, one point that must be especially inquired into by every person who makes the law,—whether the property be subject of law or of equity, or of both. Too little regard is paid to the distinction, and these grand divisions of jurisprudence, which distinguish our country, are by the acts of every

session continued and strengthened, which arises partly from the popular ignorance of the law, and partly from the work of reform in these two departments being committed to persons attached professionally to them. Wherever the words "suit at law or in equity" are used, the legislator should ask the reason of the alternative. It is impossible that our law should be whole, and consistent in principle and practice, while these most glaring anomalies continue.

As this branch of law creates rights, and regulates their transmission,—the particular event, whether it be an accident of nature, as birth or death, or a conventional act, as the deed or default of another, or both combined, which shall constitute the inception or the continuation, or the transmission, or the abrogation of the right, must be clearly marked. The conditions, in short, which shall accompany it, and how far it may be superseded by other rights, and how far in its turn it may affect them. The legislator who is not learned in the law can seldom master these points, as long as the law is unconsolidated and unclassified; but if he do his duty, this must be done. He is responsible for what he gives his sanction to, and violates a trust of the highest

"he make laws without understanding

them ; and this not a merely casual trust, which may arise out of a function of a different nature, but one which is the very soul and purpose of the function which he claims for his own.

CRIMINAL LAWS.

These laws being of most extensive popular application, affecting, in a more remarkable manner, not only the rich, but the poor, the educated, and the illiterate, more skill and reference to the ignorance of the most stupid are required in framing them. As yet, there appears to be much misconception on the subject, into which some of the most able philanthropists who have considered it, seem to have fallen. It is supposed not only that the crime (with its precise characteristics in form) and its attendant circumstances, should be foreseen by the law ; but that a penalty exactly proportionate to its degree in the gradation of offences generally, and of the circumstances of aggravation in that particular case should be beforehand awarded by the law.

Would such particularity be of any use ? Would the poor unlettered peasant and the ignorant artizan, who are the chief offenders

against the criminal law, understand its minute distinctions? But, if he should understand them, would he, before he set out on his crime, make out an elaborate calculation of consequences, as a merchant does before he embarks in a speculation? Here there is so much gain with such risk, or less risk here and more gain. Would this be the general habit of the class of offenders, whatever it may be with a few accomplished rogues in the metropolis, (to whom less mercy is due) whose practice has enabled them to baffle the wit of lawyers skilled in all the chicane of the craft. Is not the simple prohibition, "Thou shalt not steal," more solemnly impressive than "thou shalt not steal ducks, or money, or faggots, or bank notes, or bills of exchange, or bread," with all the rest of the thousand-and-one articles that may be made the subject of theft?

In the first report of the commissioners employed to digest the criminal law, two large rules pages are occupied in telling what things may be stolen, and what may not be stolen, and four more in detailing all sorts of stealing. If the law be made on this plan, it will be like an inventory of practice for the rogue—the art of stealing carefully arranged by authority.

The same might as be demanded by the body of the nation. Above circumstances, mere

accidents, should be left out of the definition. Say, if "Thou shalt not steal" be too simple, "No person shall take to himself anything which is not his."

If any one shall find anything which is not his, he shall deliver it to the nearest magistrate, who shall advertise the thing found, and take all proper measures to restore it to the right owner.

Here is the body of the law of theft. The next step is to discover the boundaries of the offence, as where the act terminates in an attempt, and where it takes a higher form of crime, as when it is accompanied by force, as in highway robbery, or burglary.

The third step is to determine the circumstances of mitigation and aggravation.

It is questionable whether it would not be right in all cases to consider an attempt as the crime itself, leaving its peculiar character to be regarded as a point of mitigation in the consideration of the punishment; and the addition of public force, or night robbery, also as the crime itself, leaving its peculiar character in this form to be regarded as a point of aggravation in the consideration of the punishment.

The same remark applies to cases of *fraud*, or where the party in the capacity of ser-

vant or other employed or entrusted person, has embezzled the property. The mode of stealing ought to be regarded merely as a question of mitigation or aggravation, as well in order to simplify the category of crimes, as because it cannot be well foreseen how far the circumstances shall qualify the offence, nor indeed what circumstances shall attend it.

But the most important reason is, that it is of the worst effect, in a moral view to teach the people to subtilize their notions of crime. It is not for man to say, "If thou hast looked upon a woman to lust after her, thou hast already committed adultery in thy heart," and forthwith adjudge that a crime has been perpetrated; but the criminal act should be reached at the earliest moment, and the idea should be fixed on the quality rather than the form of the offence.

Though the particular forms and conditions of crime, and the appropriate penalties, cannot be stated beforehand, a general scale of penalty may be formed, to which the class of crime may be subject, and this scale may have reference to all the more leading characteristics of the crime. The application of the punishment will then fall to the tribunal, whose investigation of the circumstances makes it competent to consider the proper punishment.

The question then arrives,—is the tribunal fit in its original composition, with all diligence, and pains-taking, and cure of error, ensured by appropriate appeal and superintendence.

In the last remarkable instance of constituting a new court—the metropolitan criminal court, these primary considerations were overlooked. In its composition it is unfit. It is composed of a diversity of judges, lawyers, and laymen,—the most learned of the first, and men of no extraordinary intellectual distinction of the second class, being associated for the office of judge. The great advantages of the general scheme appear to have overshadowed all the errors of detail.

Of the same quality of mischief are the courts of quarter sessions. Batches of persons are unsuitable presiding judges.

But the worst condition of this state of things is the want of some controlling power to quicken the diligence and enforce the pains-taking, and amend the error of courts so constituted.

This matter is considered more at large elsewhere.

The present state of our criminal, as of our civil law arises from the neglect of the rule “that the law speaks to all one language.” This is not always true. It has been held a

privilege to be free from the law, or more properly a privilege to enjoy for ever what the accident of a narrow rule has exempted from its previous operation. It was the principle of our legislation to change nothing, till the public sentiment, kindled by a glaring case, or a succession of cases, had forced a change, and then only to the limit of the expressed wish. In the days of feudal power, it was perhaps right to take a law so far as the powerful would grant it; but it cannot escape the most slow-witted that the law has taken its character according to the nature of the predominant power. It has been ameliorated with the improving tone of feeling in the powerful classes, but not farther than that. The only safeguard for the prevention of the continuance of this natural tendency is, the revival of the rule "that the law shall speak to ALL in one language," that all persons and all things within the realm shall be included without regard to rank or condition, times, or places, and it is a corollary from this rule that it shall be a language which all shall understand. This cannot be, if the digest furnished by the criminal law commissioners be a model of the future code. Like very scientific men, their minds are too far gone into the depths of their science to be good teachers for scholars who

have made little progress. This paramount consideration is pointed out, with all possible respect for the very able men who compose the commission. Their language will be understood by their brethren in the profession, and by well educated persons, but not by *the people*.

The fault with which we charge the English law, and now its digest, may be also ascribed in some degree, to that able production of Mr. Livingstone, the criminal code for the state of Louisiana in the United States of America, to which the criminal law commissioners refer as to a model. The law is not yet simple enough ; but that may be remedied, in a great measure, by a skilful typographical arrangement. Still the main defect attributed to our own laws will remain the too specific character of the law, the want of principle clearly expressed. This defect is not Mr. Livingstone's, but belongs to the English code, from which his was, in a great measure, compiled. We have not the same excuse, as the ground is already prepared by that labour.

The whole difficulty of our criminal law consists in the selection of penalties, and the adjustment of them to the magnitude of the offence. It is less a digest of all the quirks and quibbles of the law that is wanted, than a broad definition of offences, and a declaration

of the limits of penalty to which they shall be subject, with a tribunal competent to adjust the amount within these limits to the degree of criminality. It is not the precise amount of penalty that should be fixed, but the class of penalty—the object being that the punishment should not be at the caprice of the parties adjudicating ; and yet there is caprice, or what to the poor prisoner appears such : punishments awarded in open court are reversed by a secret tribunal.

The difficulty chiefly arises from the antiquated division of crimes into felonies and misdemeanours. By the successive changes in the law of punishments, the former has become an unmeaning name, of which few have a distinct notion.

There ought to be no such distinction in crimes founded on a mere distinction in names. The generic term of forgery, perjury, and the like, may be understood, and its grade in the class of offences might be marked by its place on the penal code, as well as by the amount of the penalty.

Kindred crimes should be put together, for instance, as above :—forgery of all kinds, and perjury,—crimes against truth ; but the chief distinction must be found in the class of penalty. The penalties are now death, trans-

portation, imprisonment, fine. To each of these punishments the law has put additional terrors :—as in death, the being buried within the walls of the prison.

Transportation may be for three, seven, fourteen, or twenty-one years, or for life.

Imprisonment for several years, either with or without hard labour, or with or without a fine.

These are all the chief methods. There are disqualifications, in respect of property and of civil position.

A list of these punishments might form a code, and underneath might be placed the offences by which they are incurred. The work of the digest would then be more than half accomplished. This, at all events, is the beginning of the work. What are the crimes, in their general nature : what the punishments. When this general outline had been sketched, the details might be quickly filled up ; and we surely have not been a nation for so many hundred years, and know not of what the whole category of crimes consists ? The legislature should take thought of this, or they will be in a maze, through the heap of learning that will be gathered for their use. There have been instances of this in other departments of the law, where caution may, through the complicated state of the law of property, be ne-

cessary ; but not with the broad distinctions of crime, which men know more or less, and by which no man's title will be jeopardised. Nor will life and liberty be subject to greater risk. The subtleties of the law have been seldom friends to freedom ; or its bounty in the one case has been matched by equal liberality in wrong in the other.

PART III.

ON THE CLASSIFICATION AND CONSOLIDATION OF THE STATUTES.

- 1. THE CLASSIFICATION OF THE ACTS OF AN ENTIRE
SESSION.**
- 2. THE GENERAL INDEX.**
- 3. CONSOLIDATION OF THE GENERAL LAW.**
- 4. SUPPLEMENTAL ACTS IN AID OF THE PURPOSES OF
CLASSIFICATION AND CONSOLIDATION.**

ON THE CLASSIFICATION AND CONSOLIDATION OF THE STATUTES.

OUR next division of the subject consists of such improvements in the general body of the law, as are necessary for the perfect modelling of a single law; which must be regarded, not only in its independent character of a separate work, but in its connection with the general body of the law of which it forms a part.

The simplification of each statute depends, in a great measure, on the classification and consolidation of the whole body of statute law, and in turn, such classification and consolidation also depends on the simplification of several statutes, governing large divisions of public affairs, and on the passing of others on subjects which more or less form a part of every law.

CLASSIFICATION.

An excellent prelude to a system of consolidation would be found in the classification of

the statutes of each session. It would give a ready means of connecting the works of one session with those that have preceded it, while it would also accustom the members of the legislature and the public generally, to view the law in a more systematic and clearer light. The statutes of the last session have been adopted as the example. They are not so numerous as those of preceding sessions, yet, on that account alone, they furnish a means of shewing how to mark the fact, that no law has been passed on some branches of public affairs. It is difficult to say to whom this work of classification should be entrusted. If it had not been effected before or during the progress of the law through the legislature, the task might be assigned to a functionary, answering to the minister of public instruction in other countries—the utility, and even the indispensableness of whose office, in this and other matters, will be shewn in another chapter.

It is true that the defects of the list of statutes, passed in the session, is, in some slight measure, cured by an index to the statutes, published by the king's printer; but it is of no value to members of the legislature, while the laws are passing—nor would it be very fit for the purpose, there being so many references backwards and forwards, as to deprive it of the

value of a systematic and unconfused analysis. Besides, this index is not made known in a proper manner, and is seldom referred to, except by lawyers and other persons who have frequent occasion to refer to the statutes at large. The classified analysis ought to be published in the London Gazette, that all men might know that a law which affected their interests had been passed. The discussion in Parliament often terminating in nothing, the public acquires a very hazy view of the results of the labours of the legislature. Members of Parliament too, who have mingled in these discussions, are often ignorant of the further progress of a law, which has gone from their own house; and it is the commonest thing in the world for a member to be unaware of a law in progress, affecting a sister country, which is of a similar purport to one that has engaged his keenest attention. The friends and enemies of both, thus frequently lose a valuable alliance through the ignorance of parties as to the nature of their kindred interests. The law too, suffers in the universality of character, which it would otherwise derive from the common support of men engaged for the same principle, for different localities or classes.

In the Appendix is the table of Public General Statutes, passed in the last session of

Parliament, (abridged for the sake of gaining space).

The order of the acts, in that table, is determined by the order in which they receive the royal assent—and, in consequence, the acts of the same kind passed in different sessions take a very different place in the respective tables of those sessions. The following classification is recommended as connecting the acts of the same kind, passed in different sessions, with each other: enabling the reader to discover at once whether any thing had been done in any department, in any one session—for it is as important to know whether *anything* has been done as it is to know *what* has been done.

The following is not offered as a perfect classification. It would require to be tested by the course of legislation for the last thirty years; and to be adapted to the departmental divisions of the executive departments. From the observation of the course of legislation for several years past, and from a guess, which every body is more or less able to form of the probabilities of the future course of legislation, it is presented with some confidence, as complete in its essential principles.

Comprehensiveness should be a principal consideration in framing a classification of this description; the subordinate divisions are ca-

pable of easy adjustment. In the present instance, the leading outline has been framed in regard to the present departmental divisions of the executive. It is not fanciful or capricious, but follows the arrangement which has been observed in corresponding affairs.

OUTLINE OF THE PROPOSED CLASSIFICATION
OF THE STATUTES OF A SINGLE SESSION.

- | | |
|--------------------------------|----------------------------------|
| 1. THE CROWN AND ROYAL FAMILY. | Miscellaneous Revenues. |
| 2. THE LEGISLATURE | 7. HOME DEPARTMENT. |
| 3. PUBLIC OFFICES. | Municipal Government. |
| 4. THE FORCES. | Public Peace. |
| The Army. | Religion. |
| The Militia. | Public Morals. |
| The Navy. | Public Charities. |
| 5. FINANCE. | Public Health |
| Ways and Means. | Public Roads and Communications. |
| The Debt. | Public Works. |
| 6. THE REVENUE DEPARTMENTS. | 8. ADMINISTRATION OF JUSTICE. |
| The Excise. | Civil. |
| The Customs. | Criminal. |
| The Stamps and Taxes. | |
| Post Office. | |
| Land Revenues. | |

9. AMENDMENT OF	Trade generally.
GENERAL LAW.	Particular Trades.
Personal Laws.	11. COLONIAL AFFAIRS.
Property Laws.	12. FOREIGN AFFAIRS.
Association Laws.	
10. TRADE.	

The subordinate distribution of the Acts of each department follows the business of the single session of 1834; there are probably other minor divisions, which the examination of the business of a few sessions would suggest. However incomplete, as a classification of the acts which fall under each division of the subject, the distribution of the acts according to larger branches of the subject matter, is a wonderful improvement upon the plan now in use.

It is not proposed that these abbreviated titles should be employed alone. The short title might be used in the classification with the fuller one; and great advantage would follow from such a method. The first title would give notice that a particular law was affected, while the second would tell in what respect. In the present instance, the list of statutes of the session of 1834 in the appendix will give the fuller title, though somewhat ab-

breviated, and the numbers attached to each Act in the following table refer to its place in such list.

The word "Act" must be understood with each case, as "Registration of Voters" Act." The repetition of it would have been monotonous as well as unnecessary.

CLASSIFIED TABLE OF THE STATUTES OF
SESSION 1834.

4TH AND 5TH YEARS OF WILLIAM THE FOURTH.

1. THE CROWN AND ROYAL FAMILY

None.

2. THE LEGISLATURE.

HOUSE OF COMMONS.

Registration of Voters, (Scotland,) (88.)
Warwick Witnesses' Indemnity, (17.)
Liverpool Witnesses' Indemnity, (18.)
House of Commons' Offices, (70.)

3. THE PUBLIC OFFICES.

Exchequer Office Regulation, (15.)
Clerk of the Pipe, (Scotland,) (16.)

MISCELLANEOUS.

Pensions Civil Offices, (24.)
Pensions Civil Offices' Amendment, (45.)
Indemnity, (9.)

4. THE FORCES.

THE ARMY.

Mutiny, (6.)

THE MILITIA.

Militia Pay, (63.)

Militia Ballot Suspension, (64.)

THE NAVY.

Marine Mutiny, (4.)

Navy Pay, (25.)

Greenwich Hospital Annuity, (34.)

Merchant Seamen's Relief, (52.)

5. FINANCE.

WAYS AND MEANS.

Transfer of Aids, (2.)

Exchequer Bills 14,000,000, (8.)

Sugar Duties, (5.)

Pensions Duties' Bill, (11.)

Consolidated Funds, (12.)

Exchequer Bills, 14,384,700, (58.)

Consolidated Fund Appropriation Act,
(84.)

THE DEBT.

Four per Cent. Annuities, (31.)

Bank of England Debt, (80.)

6. THE REVENUE DEPARTMENTS.

THE EXCISE.

Excise Revenue Management, (51.)

Spirit Duties, (75.)

Starch Duties' Repeal, (77.)

THE CUSTOMS.

Customs' Amendment Act, (89.)

Smuggling Act Amendment, (13.)

THE STAMPS AND TAXES.

Land Tax Amendment, (60.)

House Tax Repeal, (19.)

Assessed Taxes Relief, (73.)

Assessed Taxes Composition, (54.)

Stamp Duties' Relief, (57.)

POST OFFICE.

North American Postage, (7.)

Newspapers' Postage Colonies, (44.)

THE LAND REVENUE.

Dean Forest Boundaries, (59.)

Menai and Conway Bridges, (66.)

MISCELLANEOUS REVENUE.

None.

7. HOME DEPARTMENT.

LOCAL AND MUNICIPAL GOVERNMENT.

THE COUNTIES.

Expenditure of County Rate, (48.)

TOWNS.

Burghs of Scotland, (86.)

Royal Burghs, (Scotland,) (87.)

PUBLIC PEACE.

Disturbances Suppression, (Ireland,) (38.)

Arms (Ireland,) (53.)

PUBLIC HEALTH.

Fever Hospitals (Ireland,) (46.)

RELIGION.

Roman Catholic Marriages, (Scotland,) (28.)

Ministers of Church of Scotland, (41.)

Church Temporalities (Ireland,) (91.)

PUBLIC MORALS.

Glasgow Lottery (37.)

PUBLIC CHARITIES.

Poor Laws' Amendment (76.)

PUBLIC ROADS AND COMMUNICATIONS.*

County Bridges, (Ireland,) (61.)

General Turnpike Act Amendment, (81.)

Turnpike Acts Continuing, (10.)

Turnpike Roads (Ireland,) Continuance, (91.)

Irish Roads Acts Amendment (50.)

PUBLIC WORKS.*

Courts of Justice, Dublin Offices, (68.)

* These should be under the Commissioners of the Land Revenues : but in practice they are not.

Exchequer Bills, Public Works, (72.)
Bayswater Sewer, (96.)

8. ADMINISTRATION OF JUSTICE.

Juries, Ireland.

CRIMINAL.

Central Criminal Court, (36.)
Bodies of Criminals, (26.)
Capital Punishments, (67.)

CIVIL.

Court of Chancery, (Ireland,) (68.)
Lancaster Court of Common Pleas, (62.)
Courts of Equity, Service of Process,
(82.)
Costs in Actions of Quare Impedit,
(39.)

QUARTER SESSIONS.

Justices of Peace, (Scilly Islands,) (43.)
Spring Quarter Sessions, (47.)
Administration of Justice in Boroughs,
(27.)
Appeals against Convictions, (Ireland.)
(93.)

OTHER JURISDICTIONS.

Stannaries Court Cornwall, (42.)

9. AMENDMENT OF THE GENERAL LAW.

PERSONAL LAWS.

None.

PROPERTY LAW.**REAL PROPERTY.**

Landed Securities, (Ireland,) (29.)
Exchange of Lands lying in Common
Fields, (30.)
Tithe, Stay of Suits, (83.)
Fines and Recoveries, (Ireland,) (92.)

PERSONAL PROPERTY.

None.

REAL AND PERSONAL PROPERTY.

Equitable Apportionments, (22.)
Law of Escheats Amendment, (23.)

ASSOCIATION LAWS.**FRIENDLY SOCIETIES.**

Friendly Societies' Act Amending (40.)

CORPORATE BODIES AND PARTNERSHIPS.

Associations Letters Patent, (94.)

10. TRADE.**TRADE GENERALLY.****SHIPPING.**

Port of London Dues, (32.)
Mumble's Light-House, (69.)

INSOLVENCY.

Insolvent Debtors, (Ireland,) (56.)
Payment of Creditors, (Scotland,) (74.)
Insolvent Debtors, (India,) (79.)

MISCELLANEOUS.

Weights and Measures, (49.)

PARTICULAR TRADES.

- Chimney-Sweeper's Regulation, (35.)
- Conveyance of Fish Amendment Act, (20.)
- Factory Act Amendment, (1.)
- Flax Bounties Repeal, (14.)
- Newspaper Proprietors, (Ireland,) (71.)
- Sale of Beer (85.)
- Sale of Hay Act Amendment, (21.)
- Sale of Tea, (33.)

11. COLONIAL AFFAIRS.

(See Post Office.)

Administration of Justice—Norfolk Island.

12. FOREIGN AFFAIRS.

None.

A similar distribution of local statutes should be made—first, in the larger divisions of England, Scotland, Ireland; then into the circuits of the former, and the provinces of the latter: then into counties, hundreds, baronies, and parishes. This minute and varied classification is essential; for these statutes frequently relate to more than one district as in the case of rail-roads and canals.

Again, these statutes should be classified in an authorised manner, according to their nature, for the sake of facility of reference to subjects of the same kind. This is done, more or less, for

the members of the legislature: but it should be done not only for the makers of the law, but for the doers of it.

To this classification of general statutes should be added a list of all statutes repealed, wholly or partially, in the course of the session. The arrangement of this list should correspond with that of the classification. There is another simple method at our command. Let a huge table, like a sheet almanack or map, be made of all the statute laws that are now in force, in the order of their passing. The first column would contain the year of the king's reign, as well as according to common computation; the second, the short title or general subject of the statute; the third its fuller title; the fourth the numbers of its sections: thus,—

1. 2. 3. 4. 5.

6. 7. 8. 9. 10.;

and so on to the end: and in the last column the name of the statute by which the one in question had been repealed, either wholly or partially. If the entire statute were repealed, it might be struck out with a black line; if only a part, then the numbers of the clauses which had been repealed.

Other tables might be formed for the different

of subjects:—say there shall be twelve.

the simplicity of the twelve
will be travelling in

the same direction. Take the departments as above—the crown, the legislature, and so on. The distribution into columns, as before suggested, might be adopted. The plan is capable of even farther extension.

THE GENERAL INDEX.

The whole body of statutes, passed in the same session, should have an Index, as full as that for each statute. In the General Index all that related to the same class of topics would be brought together. Thus it might be discovered at once whether any peculiarity of enactment was established in one case for one part of the country or for one subject, or for one class of persons, which had not been allowed in similar cases. A capital vice arising from our multifarious legislation would receive a check. The anomalies that now perplex the public, and the courts of justice, or create a feeling that statutes are negligently passed, or that a partiality is exercised for some people at the expense of others, might be cured so far as they were not designed; and where designed, a sufficient reason to justify the peculiarity would be forced on the parties most prominently instrumental in the attempt to establish it.

The labour would be slight: as each act would have its index, it would require only that the parts of each statute index should be transferred to the corresponding parts of the general index. For the use of those people, who need only a particular class of statutes, as money statutes, or trade statutes, indexes to each class should be made on the same principle. There would then be an opportunity of comparing the statutes of the same kind in the same particulars. Nor would it be unwise to have a separate classification of the statutes relating to Scotland, Ireland, and the Colonies, with their respective indices, for the same purposes. It might probably be objected to such elaboration that it would be expensive, which is indeed an objection to the present method. But this would not be a fair statement of the position. The present method is impugned for costliness as well as its inefficiency;—the cause of the inefficiency is a dishonest or blundering and irrational enlargement of the weeds and tares of the act. Efficiency is the object; and every needful expense in making good laws will create a saving to the public in a thousand ways, which will not occur to persons unacquainted with the details of the administration of the law; and with the misdoings, in points prohibited by it, that arise from the general ignorance of its provisions.

But if it were to produce no further effect than to enable legislators to acquire a thorough knowledge of the practical parts of legislation at the least expense of labour, and therefore a more general, business-like competence for its high functions, a great national good would be obtained.

But, in truth, this machinery might be created at a small cost; and probably by the simple application of a portion of what is now expended on the same objects.

Let a return be moved for, of all the expenses of making laws, paid by the Treasury, and by each of the subordinate departments of the state, whether for England, Scotland, Ireland, or the colonies, and whatever the subject matter, during the last ten years. Let such return state the amount paid to counsel, and to attornies, and to stationers; and also the cost of printing each of our long-worded, round-phrased, acts of parliament during the same series of years: and the costliness of the present system will be found to be in no way exceeded by the possible cost of the reform of a new one, on the principles urged in this work.

CONSOLIDATION.

If the method recommended for the classifi-

cation of the statutes of a single session were pursued for past legislation, from the beginning of the statute book to the present time, the work of consolidation would be an easy task, and it might proceed gradually, as the exigencies of the times and the public interest called for a reform in any division of legislation. This labour, beyond the superintendence of a competent head, would be clerical, and might be accomplished in a few months, and at no great cost to the country. It would be a good, and is, indeed, a necessary prelude to the labours of more enlightened jurists, in the work of consolidation, who should not be exhausted by the consideration of small and worthless details.

Indeed, if this undertaking should be ever honestly set on foot, the selection of the agents would require great attention. Lawyers would be better counsellors than law makers; quicker to discover points of error than to scheme the arrangement of the provisions, or even to express them happily. Their minds are too technical; their habits too conventional. A master of the English language would be a better law-maker than a master of common law or equity. There should be men of the latter class associated with
er of the law—critics of his labours.
-old woman would be a better
urpose—the plainness of

the law to plain understandings. The nation wants clever laws, more than clever lawyers. The last are often the fruit of bad or abstruse laws, which are productive of one-sided legislation, and many of the vices and miseries of litigation.

If we would not wait for the all-perfect mode of accomplishing the work on the one hand; or the absence of all difficulties on the other; a ready way of consolidating the law might be fallen upon, which would be good, at least, for a beginning. The whole work of consolidation, if honestly intended, might be effected in the short space of five or six months.

On every branch of law there are able treatises, written in intelligible English, and appropriately arranged. Let a commissioner be charged with reducing one of these treatises into an act of parliament, by changing the language of instruction into the terms of enactment. Where there are questionable points, let the whole debate upon them be extracted, and one side or other of the questioned points inserted in italics, to be afterwards mooted in the Inns of Court, or in the Courts of Law. A bookseller's catalogue will give the names of all treatises; and, if there be no better, Blackstone's Commentaries would give the leading divisions,—not to hurt prejudices by mentioning the French or any other foreign code. Fifty men in less than

six months might accomplish the work of consolidation. A superior class of commissioners might then report on the general policy, and the disputable questions, of each branch. If, in the meanwhile, the legislature touched any part of the law, the whole of that branch should be brought under its notice.

Twenty thousand pounds would accomplish the whole, for England, Scotland, and Ireland. One set should not be touched without the other; for if a law be good for one part of the kingdom, there ought to be some very special reason why it should not be good for all: at least, the legislature should know the differences. Whatever may be said against codification, nothing can be said against consolidation—which is codification. And the legislators, who are ever at the mercy of lawyers, without whom they cannot read their own laws, and who are only better *guessers* after all, have no interest (but the reverse) against consolidation. It matters not by what name the work be called: but what is wanted to be known is, ‘What is the law?’ And this question is answered more or less fully by many legal writers, who, writing for a different purpose, have written honestly.

To render their works available, it is only necessary to abridge them of all that is useless, alter the terms, as above suggested,—to

reduce them into chapters, sections, and paragraphs. Each paragraph should contain a single proposition; that is, one substantive object;—with those accessories only that are indispensable. The law-maker should have a special regard to the unities of object, time, place, and person. The chapters should have one series of numbers, and the sections of each chapter another series, to admit of the incorporation of additions, and the substitution of improved for defective portions;—an improvement on the French code.

The whole should have, as above suggested, an analysis, with the heads of chapters, and the heads of their respective series, and an index. It is by an index only that all the parts of the law concerning different persons, objects, and places, can be brought into connected view, in order to an accurate construction of the general and particular purposes of the law. The index therefore should be as much a part of the act as the body of it; and this would remove another defect of the French code.

SUPPLEMENTAL LEGISLATION.

But in order to classify the statutes according to their subject matter, and to pro-

duce simplicity and uniformity of practice, it would be necessary to pass sundry general laws, regulating many incidental matters, which more or less form a part of every law. The recent practice of providing a special mode of proceeding for each subject matter, has augmented the tendency of legal minds to quibbling, and has destroyed the wholeness and oneness of principle which ought to prevail in every scheme of jurisprudence, on the same subject matter.

The statutes of this sort, which are most required, are the following :

A Statute of Penalties.

A Statute of Petty Judicial Procedure.

A Statute of Grand Judicial Procedure.

A Statute of Public Instruction.

A Statute of Notifications.

A Statute of Sale, and Purchase of Public Property for Public Improvements.

A Statute of Borrowing Money by Public Bodies.

A Statute declaring a Punishment for Making or Forging False Declarations or Certificates required by Law for any purpose whatever.

Should the legislature ever adopt this scheme of obvious improvement, an Act of Parliament would resume its ancient character. The simple enactment prohi-

biting or directing a thing to be done :—except in those cases, where the object of the law should be regulation ; and these would be few. It is now a source of the defects in most Acts of Parliament, that they have to carry all the machinery for their execution. There is something to be done ; and forthwith the whole armament of procedure must be marshalled together, that the purpose may be overlaid, under pretence that it may not want anything on its way.

If it were within compass now, to say that the whole of the Acts of a session might be brought within one half the space which they occupy, it would then be no violent boast to undertake that the whole should not occupy a tithe of their present space.

The Statute of Penalties is by far the most important of the proposed Supplemental Statutes. Upon it depends the entire character of that part of our code, which may be called Civil, Criminal, or Correctional.

There seems to be no reason, why there should not be an Act declaring all the penalties which attach to all sorts of offences. It would not be a bad way of consolidating the criminal law. Let there be two returns, one shewing the offence in its gradation of enormity ; in a second column, the punishment on

the first offence; and in a third column, the punishment on the second offence; and if there are alternative punishments, the second and third columns, shewing in each case the alternative. The second return should contain the name of the penalty in its gradation of amount, with the crimes and offences to which it attaches in parallel columns. If all the sorts of penalty were in the latter manner to be arranged and numbered, and made the subject matter of a distinct enactment, other Acts might refer to the scale as to a standard. In the case of pecuniary penalties and forfeitures, the mode of recovering them ought to be declared in one Act; and if there are to be two methods, one summary by the aid of justices, and the other by action, the mode and conditions of these two methods of procedure should be set forth. By this expedient, economy in printing might at once be obtained, and all men might attach a distinct idea to penalty. The subject would cease to burthen every Act.

By arranging the Penalties in this manner, a common fallacy would be exposed. In the enumeration of the hardships of the penal law, it is customary to say that such and such a law imposes so many penalties; the whole amount of which would make up some enormous. The same fallacy is also used with

regard to oaths. The absurdity results from the manner of imposing penalties. If, as was the case before it was so usual to attach a definite penalty to a given offence, no penalty were named, and the disobedience of the law were to be punished by a fine imposed by the courts, nobody would say that the law was dreadful: that it imposed so many penalties. It is a part of the condition of the law, that its disobedience in each instance should be followed by punishments; and of the limited number of punishment, which it is in the power of man to impose on his fellow, the question arises, of what kind shall it be? and of what degree of that kind? To say that this offence shall be punished by a £5 penalty, or that by a £200 penalty, is but to say that it shall be visited by a pecuniary fine of a particular degree. It may be a fair question—whether the fine be disproportionate to the offence, or whether that which is imposed on one class of persons, is more or less oppressive, the circumstances of each being regarded, than that which is imposed on another class?

It is always of importance to get rid of fallacies, that we may judge rightly of the nature of our subject. It is peculiarly so in matters of law, which affecting so largely the morality of the country, ought to be stripped

of every prejudice opposed to its efficiency, as well as to be made conformable to good sense and impartiality.

A tabular exhibition of penalties would be of some service to help senators to a clear conclusion. It would effect also—what is the especial object of this work,—some improvements in the way of simplicity, and a common understanding of what the law is. The almanacs of each class of persons, might then contain the list of penalties to which they are peculiarly subject, while the general almanacs would give what concerns the public at large.

But its final result would be the abolition of penalties in their present form, and a revival of the more ancient method of amercement, by the verdict of a jury. In the attempt to be fixed and certain, and thereby limit the discretion of a half-trusted jurisdiction,—that of justice of the peace, a system of oppression and unfairness has been established. To make the lowest penalty, 40*s*, and the highest £10, to subject the richest in the land to the loss of a single day's dinner, and the poorest to the loss of the entire subsistence of himself and family for a week, is but a sorry way of adjusting the scale. It may indeed admit of question whether it is possible, by any means, to adjust a scale to a prin-

ciple of fairness, even with the aid of the powers of mitigation sometimes conferred on the magistrate. Certainly no money scale, with its variable values at different times, can reach that object.

If the principle of the scale were, as it ought to be, next to the magnitude of the crime, the magnitude of a party's means, in relation to his position, it does not appear impossible to arrive at a pretty fair criterion. A man is rich or poor—dependent or not on his daily industry. Suppose, in the former case, the fine should be taken, as it might be, according to the scale of a man's income, as for example, say the penalty shall be one day's income, or more. The law should declare the offence, and then the degree of pecuniary fine to be imposed according to the income of the offender. The only question, in any case, after the offence was proved, would be, what is the offender's income, and this might be decided with less difficulty than is supposed. The parochial assessments, the tax assessments should be produced; and where these failed, evidence should be given as in actions for breach of promise of marriage.

It may be said that the rich, who are too powerful, would not consent to this arrangement, and that, in consequence, many laws

would not be suffered to pass, which are now very penal, for slight matters. It is not to be credited that all the rich have such sympathy with rogues of their own class, that they would not readily acquiesce in the enactment of laws for the public good, in which their share is the largest ; but if the second effect should follow, it would be, of all blessings that could befall the nation, the best for rich and poor. The establishment of such a state of sympathy between both classes, while it would relieve the latter of many unquestionable oppressions, would remove many jealousies that now threaten ultimate danger to the rich, if they be not removed in time. This is the more necessary in the matter of penalties, as it not only falls to the lot of the better-off classes to make the laws imposing them, but to the same class devolves the duty of applying such laws. This is the case in the provinces at least.

There is great doubt in the question before touched upon, whether the penalty should be wholly, more or less, or not at all discretionary. The qualifications and position of the parties in whom the discretion is to be invested, must be considered in determining this question.

They are the judges of the higher courts, the magistrates in body at the quarter sessions, and one or two magistrates alone. It is hardly pos-

ciple of fairness, even with the aid of the powers of mitigation sometimes conferred on the magistrate. Certainly no money scale, with its variable values at different times, can reach that object.

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It may be said that the rich, who are too powerful, would not consent to this arrangement, and that, in consequence, many laws

ought to be dealt with at once as a fearful disease.

The foregoing relates to the amount of the penalty and the rule for ascertaining its amount. The application of the fine is another consideration. It is sometimes divided between the king and the informer; sometimes the parish has a share; sometimes the county;—but often the poor man, who has suffered wrong, gets nothing, while the country is at the chief burden of the judicial expenditure.

If it should ever happen that judicial statistics could be more fully recorded, a way might be fallen upon of indemnifying the sufferer for his losses to the extent of funds paid by wrong doers, and the state for its expenses out of the same means. Law Taxes are bad, and of this class are all fees required in the progress of the cause, before the wrong doer has been convicted; but as soon as his delinquency is established, whether in civil or criminal cases, he should be compelled to make both public and private retribution to the extent of his means. It is not enough to declare a penalty, the means of enforcing it must be ready, and the motives to enforce it encouraged. To rely on the casual aid of informers, on the sordid motives that shall operate upon them, only

when the penalty is tempting enough, is surely worse than to rely on the vindictive feelings of individuals who have suffered wrong, checked and tempered by the interposition of cooler minds, so that the punishment, though sought out by the sufferer, is not measured by his intemperance. Revenge is at least more respectable than a trade in spying and eaves-dropping. It may be said that the parallel does not always apply; that informers work where private feelings could not find play:—then, that is in some measure a test of the usefulness of the prohibition. If, however, these be things of so general and transitory a nature, affecting all, and yet not open to the surveillance of neighbourhood, then officers should be appointed to take the office of inspection. The overlookers should have a personal identity—a fixed character and responsibility,—not here to-day and away on the morrow; or appearing in the character of one's friend, or one's servant, or as a casual stranger, entrapping us into the commission of offences which we were ignorant of in name and nature.

The best thing is to avoid every inquisitorial law that is not recommended by a very large amount of utility; and to secure its effective operation by the superintendence of an efficient public officer, acting as a public prosecutor,

with the aid of an efficient police establishment. The excesses of such a body cannot be wholly prevented; but where a free press flourishes, they will never last long or spread widely. There can be nothing worse than the mockery of laws, inefficient for the want of an executive to enforce them. Of this character there are many, while of those that include a provision for their enforcement there are few which do not establish something so peculiar, that the general eye is not directed to it. The machinery should, in all cases, be the same, where it is practicable to make it so; and it should never vary beyond the extent of the peculiar circumstances. The public being constantly drawn into communication, on some account or other, with the local tribunal and its ministerial agency, would share in the inconveniences of a bad system, and become interested in helping the greater sufferers to remove them. It is rather curious that of late several popular advocates have censured the abolition of the Hackney Coach-office in London, because most people have a repugnance to an attendance at the Police Offices; so crowded, unhealthy, and ill-adapted for their purpose are those places. But should not this have suggested the improvement of the Police

Office, rather than the creation of a new court ? Until the mass of the public are brought into contact with these tribunals, the oppressions of the penalty system that now obtain, will never be detected. The rare case that appears by chance in the newspapers is now multiplied by a thousand instances, which never gain a place there.

Next to a Statute of Penalties, in importance, would be the Statute of Petty Procedure. It is almost involved in it : for if there should be sufficient enlightened energy to attempt the one, the other would follow. Mr. Chitty, one of the most practical of lawyers, in his excellent work on the General Practice of the Law, and Best Remedies, (a work which no lawyer or gentleman should be without) strongly urges the necessity of such reform.

It can scarcely be hoped that we shall have a Statute of Judicial Procedure for the higher courts, while the present disposition to increase their number for every separate class of cases prevails.

Yet we shall never attain to the boasted simplicity of the common law until we have exchanged our multitudinous practices for a few simple methods. At present the legislator needs to have all the technical skill of a law-

yer's managing clerk, inured to sharp practice, to escape blundering.

The Statute of Public Instruction should enact the means of speedily promulgating the law. It involves also the best means of ensuring a common knowledge of it: these points are discussed incidentally in succeeding sections. They are only mentioned here in connexion with the next, which is a kindred subject.

The statute of notifications would be directed to establishing a general mode of notifying all matters of a legal nature.

It would be necessary that such a statute should point out in what way any notices should be given, whether of public or private proceedings, to a single person or a greater number of persons,—to known or unknown persons.

It is usual to require specifically, that every summons or notice should be delivered at the house or place of business, of the party addressed, to his wife or servants, or any other member of his family, except where a personal service is required. This ought to be the rule: and where personal service is not expressly mentioned, if the matter relate to him, it should be left at his place

any other matter, then at the house of the party: especially if it concern any local affair.

Of public meetings, the county paper should be the medium of notice; a week's notice, a fortnight's notice, a three weeks' notice should all mean a notification at those intervals of time, to be repeated once, twice, or three times, as the case may be.

Sometimes the public gazette is the medium. Some notices are to be stuck up at the church-doors, whither not a tithe of the population goes,—some to be recorded in petty ecclesiastical courts of which few know the existence—others in the office of the clerk of the peace—some are notified by ringing of bells—some by the criers—some by beat of drum—some things are to be read from the pulpit—others by the clerk. Proclamations are read in the county court in the presence of twenty persons or at the corner of the street in the presence of 200 for the information of 200,000. When shall the old methods die away, and follow the things that produced them? Why should the population of a county or a city flock to the door of a county court or to a church to decipher the pothooks and hangers of some stripling clerk, when the whole matter might be brought under the eye of each man, woman, and child of the distinct type at their own firesides.

These notifications ought to be given in gazettes, national or local. Indeed, the matter of gazettes is one of primary importance, and will be treated more at large in the division on institutional reforms, which are necessary for the perfecting of English legislation.

It is clear that there should be some organized method of notification,—so that all men should know where to look for what may, by possibility, concern them. A law often escapes notice at its passing; or the contingency being remote, its bearing on particular parties is quickly forgotten. The notice of bringing it into operation in any other way, becomes therefore a matter scarcely inferior in importance to the passing of the law itself. The persons charged with the execution of the law are, too, entitled to some indulgence. They should have a simple and ordinary course which it is difficult for plain men to mistake.

It is unnecessary to discuss the other supplemental laws which have been suggested. They are but specimens of a mass which would be adopted, if the better plan of legislating for a large class of cases, and not for each case, should be resolved upon. For instance, in the Poor Law Amendment Act, and in the Friendly Societies' Amendment Act, both of last session, there is a provision that the barrister in the one case, and the commissioners in the other,

shall be at liberty to transmit and receive packets, free of postage, by the general post. The provisions, in both cases, are alike, except in their designations of the functionaries, by whom the privilege is to be enjoyed. There are probably many other cases of the same sort. Why should the same lengthy clause, detailing the form of proceeding, the penalties, and so on, be repeated in each case? Why should not an Act, which, for shortness sake, might be called the Public Officers' Franking Act, be passed, pointing out in what manner the privilege should be exercised, and the consequences of abusing it? A very short provision might be contained in an Act of the legislature, if it were thought desirable to confer the privilege on another officer, to the effect that such officer should enjoy the privilege under the Public Officers' Franking Act. The Post Master General would have nothing to regard but this simple enactment. He must now regard very specially the precise tenor of this elaborate clause. But, that is not all: there is a temptation and opportunity to insert in it something peculiar in each case; and then, in this as in other points, speciality without measure, may be introduced to the perversion of any general rule, and of course to the obstruction, in some measure, of the post office business. Our public officers

ought not to be incumbered with any unnecessary specialty legislation.

The above mentioned Supplemental Legislation applies chiefly to the general law. There is a peculiar class of law which does not commonly come under the notice of the public—the Official Laws. What these are, and they form by far the most extensive subjects of legislation, will have been seen in the classification of the statutes for a single session. A similar process of Supplemental Legislation is especially required for them: for instance, as soon as there have been general laws passed for the perfecting the departments of expenditure as well as those of receipt; the laws imposing a tax, or creating an office, except as to matters of a peculiar kind relating to it might be confined to the composition of the tax, or the creation of the office. In the first case, the mode of assessing, and levying, and collecting, and receiving, and paying, and applying, would all be determined by the general law. One step has been made in this direction by the Exchequer Offices' Reform Act passed last session. In the second instance, the law regarding the qualifications, the appointment, the pay, the pension, the dismissal, the superintendence, and all that concerns the general conditions of the office apart from its

peculiarities, ought to be the subject of a general law. The Civil Offices Pensions' Act is another specimen of what may be done in this way. It is possible that a great deal has been done, though few know it, because the statutes are disconnected. An inquiry should be instituted into the state of this matter, that there may not be a vain seeking in the dark for what is already under our feet.

PART IV.

INSTITUTIONAL REFORMS CONNECTED WITH LAW-MAKING.

- 1. THE PREPARATION OF A LAW.**
- 2. THE MAKING A LAW.**
- 3. THE PROMULGATING THE LAW.**
- 4. THE ENFORCING IT.**
- 5. THE SUPERINTENDENCE OF ITS OPERATION.**
- 6. THE AMENDING IT.**

INSTITUTIONAL REFORMS.

THE present and last division of the subject is devoted to those Institutional Reforms, which, like the last division, may modify to a great degree, the individual character of each Act of Parliament, as well as the general character of the law.

PREPARATION OF A LAW.

As a guarantee for good workmanship, no law should be received until it had been referred to a committee of the House, to report in connexion with it on the following points.

1. Chronological statement of the Acts passed from time to time on the same subject.

2. Chronological statement of the decisions of the courts upon those Acts, and the branch of law which they concerned.

3. Chronological statement of petitions, and

debates, and proceedings of the legislature, from time to time on the subject, including the reports made by committees and commissioners.

4. Statement of the views of different public writers on the subject.

5. The opinion of the committee as to the state of the question: whether further inquiry was necessary, and on what points; and giving a scheme, or outline of the investigation.

6. The opinion of the committee on the Bill submitted to the legislature.

7. To what part of the country the law applies:—and why not to all parts?

These reports having been made, the house would be able to learn whether it was in a condition to proceed; and if it should direct an inquiry, the result would probably not be, what is the too frequent result of well-intentioned labours,—an abortion. There would be much economy of time, and effort, and expense in this method; and its tendency to curtail the debates, or direct them to the question at issue, by substituting clear and specific information for ignorant and hard-faced assertion, is of itself sufficient to recommend its adoption.

There would be great advantage in following one method of inquiry, provided it were comprehensive enough, and in the case practicable.

The habits of the House, as a body, would become more systematic:—and no body of persons can be effectually governed but by a system more or less rigid.

The mode of conducting Committees of Inquiry is now very unsatisfactory and inconclusive, and it is usually found at the end of the labour, that the parties concerned are only in the position to begin.

The four first divisions might be worked up by an individual before the committee was appointed. The committee would then be in a condition to comply with the last three. The saving in expense, in most instances, would be great indeed; while the results would generally be effectual.

The loss of time and exertion in bringing forward any new legislative measure is almost computable. Even if the subject be popular, unless introduced by the government, or under its auspices, it will usually require three sessions before it can pass:—but it more usually happens that three sessions are expended in attracting the attention of the House, as a body, to the subject. This arises partly from the nature of a large mingled body of persons of various interests and experiences; and partly, and chiefly because our debates are started without material, except

on the more ordinary constitutional questions. The mover and a knot of friends, it may be, are enlightened, but the mass have neither line nor compass. Failure always attends the mover's first efforts, his facts astound but are not examined;—his very enthusiasm is quoted as evidence of the absurdity of his proposals, and the subject is discarded to be renewed year after year, till a sufficient number of the legislators are awakened to the importance of it. The press begins to speak, the public decides first, and afterwards the legislature. Its attention and assent both forced, it adopts hastily a crude measure, and learns the subject in its true bearings, only when it discovers the inefficiency of its first attempt. Whence this backward progress? Because the legislature does not inquire in a systematic manner in the first instance. Hence, too, the complaint of crowded distracting deliberations; questions, reasonable or the reverse, are all classed together as impertinences:—and the men who have devoted years of time, and labour, and no inconsiderable expense, to do a public service, are scouted as rash projectors, because the legislature adopts no method of distinguishing the good from the bad. The prudent, able, retiring member, who will risk much of personal inconvenience, by forcing on

the attention of the public an useful project of reform, is deterred from an activity which in its results, would sober or neutralize the more eager efforts of less informed and more assuming persons :—while the latter are at full liberty to urge the crudest crotchets upon the House at the expense of the national service. The most ordinary architect knows that his future operations depend for their success on a good ground plan, and the laying the foundations of his work at a depth and strength proportioned to his intended superstructure. There is no such forecasting of design in our legislation ; but it proceeds after the manner of those mushroom buildings that of late years have started up in all directions. So that there be a house—so that there be a law—on which a man may raise a name for himself, and a credit with the world, it is enough. And the result corresponds in both cases ; the laws are often left useless carcases or shells, which no one will be at the pains or cost to complete, on account of their entire worthlessness, yet they encumber the ground, whereon more goodly structures might be erected.

THE MAKING OF A LAW.

It is not a part of the object of this work, to

enter minutely into the course of Parliamentary practice in relation to the passing of (statutes in their embryo condition of) bills; yet as the general mode of dealing with the laws, in their progress through the Legislature, has a material effect upon their nature and workmanship, it is both proper and necessary to touch upon it. It is scarcely possible for the House of Commons, as a body, to give to each law the scrutinising investigation which a man, learned in the matter of it, would be apt to bestow; there cannot be that quickness to discern the bearings of the subject, which is indispensable to judge of the efficiency of the law. It is, indeed, with some persons, a common notion that each Act should bear, on the face of it, its full character; but that were an impossibility. It could not be done without so thick a multitude of references, that the more particular purpose of it would be swallowed up in accessory learning; this would be to return to the system from which we hope to make an early departure. In truth, a law, like language in general, must be suggestive rather than precise in giving its subject in all hues and circumstances. The object of the law is not details, but principles; not the circumstances of a day, but the leading events of a life. Yet in its principles it must have reference to the details, by which alone they

can be worked out; and in its contemplation of leading events, it must have regard to the mass of circumstances by which they are attended. This is effected, not by enumeration or description, but by the absence of an incompatibility with details and circumstances, which is arrived at by making the law an abstract or generality of these. How to hit this point, has been, at all times, the main difficulty in legislation, and none have hit it who have possessed great sagacity and worldly knowledge, coupled with deep reflection and sound legal knowledge. Where shall be found so rare an union? It is not found in many generations; and the only expedient is the union of individuals whose endowments make up, in the aggregate, this described combination. Men of moderate powers may have, in a high degree, portions of such combination, and such men will not be uncommon. It ought, therefore, to be a part of the legislative scheme to form committees of such persons, whose conversance with particular subjects makes them peculiarly qualified to consider corresponding branches of the law; nor should they be temporary bodies, lasting only during an enquiry on a single point. It ought to be their fixed duty to watch from year to year the operations of a single branch of the Law, that they might acquire

so entire a mastery over it, as to be able to reduce it to perfect simplicity. If a plan of classifying the laws were adopted, the classes into which it should be formed, might have their respective Committees. The grand audit of the nation might then as usefully apply themselves to checking the workings of our judicial system, which has been much neglected, as they have in the department of finance. In a pamphlet published a few years since, the author of this work suggested the distribution of the House of Commons into ten committees of 50 each, for England, Scotland, Ireland, the Colonies, and Foreign Affairs for the local distribution,—and expenditure, revenue, trade, law, and the business of the house, for the subject distribution. It would occupy too much space to enter here into the details of such a scheme, or the advantages that would result to the legislature from its adoption; it is sufficient to say, that until the working bodies of the legislature be compacter, and more particularly adapted to the variety of objects that continually press for its attention, it is scarcely possible that the law, as a body of practical jurisprudence should be very rapidly improved; or that being improved, and even cast in the form of a code, or otherwise consolidated, it should receive those minor occasional improvements, which must ever

be suggested, and indeed rendered necessary by a change of circumstances. This is a positive principle in legislation, founded on the changeful nature of all things human, and what is still more to be regarded, on man's ignorance, which, though more wise and learned than that which has gone before, is still ignorance in reference to that which comes after :—no law should be regarded as perfect in principles, or appliances for all time ;—change therefore should be prepared for, and the frame and structure of the law, on that account, made so comprehensive, that let the change be in things minute, or in whole divisions, it may be made as the occasion shall arise, without difficulty; and to revert to what is the especial object of this part of the subject, there should be such personal agency at work, that the occasion should be observed and acted upon, as men would change or modify a ship's course, as the wind blew in a different direction, though they should bear still onward to the same ultimate point of destination. How can this be done without standing subordinate committees of the legislature, composed of fit men, tasked to the particular duty. It is in vain to sneer at the labors of the legislature, or at the legislators. The results are traceable to the machinery, which puts it out of the power of one half of

the men, ambitious to be useful, who enter the house, to turn their services to any account in favour of the nation.

In conjunction with such committees, there would necessarily be a clerk or officer* to assist in their proceedings. To him might be entrusted the verbal revision of the laws of his department, under the direction of a single officer, who might arrange the whole into chapters and sections, as elsewhere required.

But until the appointment of such committees and officers, this duty of verbal revision might be executed by a single officer, with able assistants, who should be skilled in the different walks of judicature and the law; while from the executive departments they would be provided with the aid of the usual law advisers.

With the help of a general Statute of Directions and Constructions, the law would speedily acquire an uniformity of expression.

It is obvious that the revising officer should be selected for his skill in verbal expression.

* In the evidence of Mr. Vardon, the librarian of the House of Commons, given before the library committee this session, there is a curious account of his multifarious duties, which illustrates the use of having such officers specially devoted to particular purposes. The present system is clumsy enough.

It is not meant that he should have an absolute control over the language of our legislation. His duty might be confined to pointing out the departure from the provisions of the Statute of Directions and Constructions, and suggesting words more apt for the purpose.

No bill should be presented for a second reading, without being reported upon by such officer,—nor read a third time without a repetition of the same proceeding. The skill which such an officer must by constant practice acquire, would enable him to peruse and report upon four or five bills in a day; and the labour would every year grow less and less, as all whose task it would be to prepare bills, would, to spare delay or expense, take care to have them properly drawn in the first instance.

The principal officer should read all laws. The duty of his assistants in the departments, would be confined to pointing out any inaptitudes of expression for their peculiar subject matters, and the omission of any necessary provisions.

It would be necessary that the verbal revision should be performed by one man, (under such advice and assistance), that he might draw the language of all statutes, to the same uniformity of expression; and this is said with the full conviction that the other points of the law—

its materials—must be furnished and digested by other persons, whose qualifications are more peculiarly fitted for that duty. There should be more than one, not a mere lawyer, nor a mere philosopher, nor a mere draughtsman, nor a mere official man, but all of them should be conjoined for the varied function. Nothing can be worse conceived for such a purpose than a commission of all lawyers especially practising lawyers, in a single department of their profession. But again, whatever may be the component parts of the body who shall digest the law, there should be but one reviser of its form, and its terms; and he should be skilled—not in the drawing of money bills, or official bills, or justice of the peace bills, or Irish bills, each after the fashion of its kind, but—in all the forms of statute law; and therefore, because the energies of one man could not accomplish more, and it is necessary to obtain the highest skill in this direction, his task should be confined to revision alone.

PROMULGATING THE LAW.


The charge of superintending the promulgation of the law, if the economy of the age

should not forbid the appointment of such an officer, should be confided to a minister of public instruction. Before the laws are enforced, it would be seemly to promulgate them. This duty is wholly neglected, beyond the circulation of a few thousand copies to the public offices and the magistracy,—and what is worse, the law taking effect from its passing, whether the party affected live in the northernmost parts of the realm, or in Palace Yard, it operates instantly, and hence great injustice is often inflicted upon innocent parties. This is carrying the fiction of the virtual presence of the people in the Commons' House of Parliament somewhat too far. If, what would be a just precaution, the proposed law had been in terms announced in the National Gazette, there might be some pretence for this sharp practice ; but that is not done, and many people learn only by accident of the existence of prohibitions which may subject them to ruin. Immoral acts—acts obviously injuring others, as theft or murder, do not require any specific prohibition, as every man is more or less sensible of the enormity of them ; but the countless number of things forbidden, which no man's conscience, however enlightened, would pronounce to be wrong, ought to be signified by some timely notification. The National

Gazette might do much, and if the provincial press refused to acquiesce, local Gazettes might be established in aid, to make known to the people the laws under which they live ; and if ever a public system of education should be adopted, and the laws should have reached the excellence which Montesquieu conceived in the following passage :—" The laws ought not to be subtle : they are designed for people of common understanding, not as an art of logic, but as the plain reason of a father of a family ;"—they might become no small part of the ordinary system of education.

This training, with the chance information collected from reports of trials, and with the experience gained as electors, jurors, and in the other positions to which we all arrive, would help in its turn to make a good degree of knowledge in the law common among the people, and by no far result, improve the law itself, and facilitate its administration.

In a popular government, where the people have an immediate influence on the legislature, and take an active part in judicial affairs, this is an object of instant importance,—for it is in vain to hope to draw clean water from a muddy pool.



ON THE MODE OF ENFORCING THE LAW.

The law may be made, to a high degree, self-enforcing, if public opinion be made to co-operate by means of publicity ; but there will always be refractory cases, which require the aid of the courts of law. Here is the chief obstacle to good law-making;—the absence of unity in our judicial institutions. The several methods of procedure, and the peculiarity of jurisdiction, give rise to a vast proportion of the complexity of our laws. By the common law, if an act were prohibited, or a right conferred, the prosecution of an offence by an indictment in the one case, and the enforcement of the right by action and the recovery of damages for individual injury in the other, were incident to the enactment. This is still so, where the law says nothing about it ; but a system of petty judicature has grown up in aid of the superior jurisdiction of the higher courts, which being regarded in the light of an usurpation upon the latter, upon one branch of which devolves the superintendence of such inferior jurisdictions, the statutes have been strained against the supposed usurpation. Besides this, the petty jurisdictions being in their origin instituted

for special purposes, and so regarded by the legislature, there has, until a comparatively late period, existed no general plan, or principles of procedure governing them. In consequence, it has been thought necessary, in every Act of Parliament conferring a new right to be enforced by the subordinate jurisdictions, to state the special modes of enforcement. This gives rise to great complication and lengthiness in our laws. In some degree, the evil might be remedied by one or two statutes, declaring the particular mode of proceeding which shall be adopted in all cases, whatever the subject matter,—the regulations of notice or summons, the order of hearing and determining, the mode by which the penalty shall be enforced, or an appeal made from such petty to the higher jurisdiction. But it would be further necessary that the subordination to the higher courts should be complete, there being many cases in which the discretion of the court of quarter sessions is held to be absolute. The establishment of courts of local jurisdiction, whether as county courts or local courts, as proposed by Lord Brougham, would get rid of that frightful anomaly in the adjudication of the small, yet to them most weighty matters, which affect the poor. The taking away the right of appeal, reduces our system of ju-

dicature to the despotic state of the Caliphates of the East. Make the appeal ready, cheap, and certain ; but do not for the defect of the institution, take away the poor man's protection.

There should be everywhere a local magistrate, allotted to a given district. There are now places of 5000 inhabitants without one. In the consideration of municipal reform, this is a point to be regarded ; every place having a given population should have its appropriate municipal government.

From the local magistrate, the appeal should be to the provincial judge, and from him to the judge of the superior court in the last resort. But altogether there should be but one court of judicature with its subordinate branches, all governed by the same single procedure.

The difficulty seems to consist in the regulation of the procedure, so as to reduce it to the utmost simplicity, and yet provide means for facilitating appeals.

Instead of all the formal methods of information, which, while they affect to be exceedingly precise, are most meagre, the rational method, so warmly recommended by Bentham, is the best. Its excellence has been a thousand times shown under pains-taking magistrates, competent to their office. Such persons will, in an hour or two, discover the bearings of the case n

effectually than can be done by all the formal labours of equity or common lawyers, in as many years. Let the same process be adopted in all the courts, and let a short-hand writer be employed to take notes of what passes. If a party would appeal, then a copy of these notes should be transcribed and to it should be appended the grounds of appeal except in those cases, on which the magistrate had refused to hear evidence; there would be nothing to be done before the superior court, but to hear the parties, or their representatives on the copy of what had taken place in the other court. If the party failed, he should pay for the copy,—if he succeeded, the country should pay for it. Short-hand writing has now become a common attainment; the copying is even more common.

If the matter were confined to a point of law, then the magistrate should state the case for the appellant, and that alone should go to the court above.

It is clear something must be done to get rid of the growing anomaly in our legislation—the taking away the right of appeal in small matters and from small persons. It is one of the most disgraceful features in the present state of our law.

It seems to be necessary, from the specialty

style of our legislation, to pass an Act for the exposition of the commissions issuing from the executive; and some of the powers of those commissions need to be enlarged, as well as the generic appellation of the parties executing them. For instance, a Justice of the Peace, in his original, and by the terms of his commission, is destined to keep the peace; but by the addition of many special powers, in a long series of enactments, that officer has become of the first order of judicial functionaries, if we are to measure his rank by the importance and extent of his jurisdiction. He is, emphatically speaking, the poor man's judge; his authority extends over a wider range of persons and subjects, though his locality is limited. He is entrusted with a discretion that is often denied to what are called the superior judges. His decisions are often free from appeal. The term of Justice of the Peace is therefore a misnomer, unless it be accepted in the larger sense, in which, in fact, it is *not* used, as a creator of peace by settling differences. Similar remarks would be found true, in the case of ministerial officers, connected with our jurisdictions. We have bailiffs, and police officers, and constables, and servers of writs, who derive their powers from different sources, as those powers are directed to different ends.

How many and various are such subordinate officers, it would exceed the space that could be here spared to recount. They follow in corresponding multitudinous variety, the jurisdictions with which they are connected. They, too, should be made one, and governed by one general law: that both the public and the illiterate individuals, who compose such classes, may know the power, and duties that attach to their functions: and further, that special directions to such functionaries may receive a construction, conformable to their office, without the need of a wordy reference to each and every officer of the class, as often as the subject matter of his duty is mentioned. Instead, therefore, of using such terms as constable, fishingman, headborough, and high-constable, a generic term of peace-officer should be given to all, so long as they are appendages of the justice of the peace so called. But it would be better, in any scheme of corporation or local municipal reform, to arrange the rank, and subordination, and connection of these officers, so that the whole administrative machinery may be bound up well together under its appropriate head—the Minister of the Home Department. The parish government should be placed under general laws as well as the town governments. The associations in the hundred or such divisions of

the counties, for the purpose of prosecuting felons, as well as the general law—that the hundreds should pay the damage that may result, in some cases, to inhabitants within its limits, have long since suggested a mode of government that should connect and bind together in the same unity, districts extensive enough for the enjoyment of the advantages that arise to towns from that cause. The petty sessions is another instance of an approach to it. In short, the necessity of the thing has already worked considerable reforms in this way, but owing to the isolated mode of bringing them about, the effect of *imperia in imperios* has been produced in a tenfold degree. It simply wants the hand of some resolute reformer, pretending to nothing new and untried; but resolved by a business-like skill and energy, to put together in an orderly manner the materials that are now disarranged. The very act of consolidating the law would teach, with a principle of oneness, where such oneness is practicable and not repugnant to the peculiarity of circumstances, the best order, and put a stop to that petty scheme of small legislation, which, in the aggregate of its burrowing effects, is infinitely more dangerous than any attempt to reform on a whole scale, and which is, in fact, the very thing dreaded, and of much the same nature in the final effects as a dry rot,

compared with the more regular method of ordinary decay; or more aptly, it is that destruction of the whole edifice, which comes from a restless touching of every part, in the hope of saving expense, and remaining in the house while the repairs are going forward.

But there are other jurisdictions not judicial, and towards which a constitutional jealousy might be very wholesomely directed. The Commissioners of the Treasury is an instance of this sort; and of like nature are the jurisdictions of the Commissioners of Excise and Customs, who, under several Acts of Parliament, exercise a quasi judicial capacity on many matters relating to finance and the revenue. The Court of Exchequer was formerly the tribunal for cases of this kind, and it would relieve the ministry from much embarrassment if an open court were established, to exercise the functions performed by the Treasury in secret, in ignorance, in partiality—and with all the other bad concomitants that attend the proceedings of a jurisdiction of that nature. Even the suspension of duties ought to be the act of open deliberation and decision. Few official Acts, relating to trade and taxes, pass the legislature which do not contain powers of which the people are not aware, and whose aggregate magnitude renders it very questionable whether

such powers should be retained by the executive without the wholesome corrective of publicity.

This is one of the cases where a wise economy would exert itself to re-model the present, or substitute a more efficient and controllable jurisdiction—a species of court of revision, whose duty it should be to administer the law of revenue in equity, with a due regard to the nature of the case, determining whether its peculiar character entitles it to be wrested from the operation of the law—or whether the law itself, being found to be opposed, in practice, to the manifest intention of the legislature, does not demand that it should be suspended till the opinion of the legislature can be obtained; and lastly, whether new circumstances, entirely diverse from those contemplated by the legislature, having arisen, wisdom does not require that the executive should interpose. That such a power ought to exist has been proved in practice; but it ought not to exist in secret.

This objectionable jurisdiction is not confined to the Treasury. The powers of the Customs and Excise are most extensive; and scarcely a commission is appointed that has not some that are questionable. There is one fault common to them all:—the subject wants a protection which he has in other courts—the publicity derived from the constant attendance of other persons—

professional men of education—in short, a listening public; and the more so as, in the Commissioners, it has often the adverse party for a judge. It would be difficult to discover any reason for the establishment of a peculiar jurisdiction, especially as in the provinces the matter must be referred to the justices.

But here the point to be dwelt upon is, the specialty character which such peculiarity of jurisdiction forces upon the law. The advantage of universality of institution would not, however, be confined to a sameness of practice and procedure in the administration of the law throughout the land, and the consequent simplicity to the structure of the law itself, the same local magistrates might be entrusted with the system of registry, and many other matters that are now committed to commissioners, with their separate powers and jurisdictions, and the result would be both efficiency, and a great saving of expense.

In short, it may be stated, summarily, that much of the reformation of the law, in its terms and structure, is dependent on institutional reforms: and until the machinery of the executive and the legislative bodies is more aptly constructed for their purposes, the law must retain many of its worst defects.

In the meanwhile, the distinctions between

the natures of the different defects arising from the clumsiness of the machinery of the law, and those which arise from the clumsiness of the machinery of the executive and the judicial departments, must be kept in view. And it will be found that vast improvements may be made in the law, especially if the endeavour to improve be made in the right direction, while the present system lasts.

This branch of our subject will soon come under the notice of the legislature. Corporation reform will probably universalize some plain method of proceeding, applicable to all classes of cases in turns; the out-lying parts of the country—the agricultural, and places which shall not be fortunate enough to have such reformed corporations, must afterwards be looked to. We shall probably then have a good minor judicial machinery, with all the appropriate ministerial agencies. Should the Local Courts, or a court of that nature, presided over by a competent judge, be established, there would be the court of first appeal; and the higher courts might then supply a court of appeal in the last instance.

It is neither too early nor too late to dwell upon these suggestions; and the fear of suggesting too much should not be entertained by any body who can appreciate an honest course and a whole truth.

THE SUPERINTENDENCE OF THE OPERATION
OF LAWS.

For the cure of the evils that result from the want of a machinery for recording and making known the operation of our laws to the legislature, with a view to a timely correction, it was, a hundred and fifty years ago, suggested by Lord Bacon—no mean authority for these novelties in our present scheme of legislation—that competent reporters should be appointed to record the decisions of the courts, after a general consolidation of the law. There is no reason why the adoption of this suggestion should be postponed till that great undertaking has been accomplished. Its immediate adoption would indeed much facilitate this latter object. But it would be of little value to have a machinery of reporters, without a suitable machinery of superintendence, at the head of which should be a functionary, answering to the minister of justice in other countries. The want of such a person has been the cause of what delay has happened in the reformation of the law. There has been nobody responsible for such a task; while those whose offices nominally imposed that duty upon them, have been so much oc-

cupied by the ordinary occupations of their offices or other duties, that they could not apply themselves to it. It seems to have been supposed that every law passed from the legislature in a perfect state, and that it would work out all its objects by its own strength.

Indeed our entire judicial system owes many of its imperfections, as well as the tardy progress of reform, to the want of a system of superintendence exclusively devoted to it. The Home Office is charged with this department of public service, and the result corresponds with the injudicious mingling of too many and diverse duties. The plans for law reform are delayed from year to year, until delay is no longer practicable ; and those plans only are adopted, which are forced upon attention by some pressing and peremptory emergency. The Secretary of State for the home department, may properly enough hold the control of the police, as well as those duties which concern municipal government generally ; and surely the labours of such an office would task abundantly the talent and application of any individual. Even, when the promised reform of corporations has been attained, the necessity of an active superintending control will be requisite, to keep the law in full force. But how is it possible that this officer should find

either time or strength to watch over the workings of the judicial system,—the most complex and extensive of all the functions of government? The machinery of the institutions for the administration of justice comprises the least portion of that function. The watching over the administration of the laws—demanding, as it does, the highest qualities of the mind, the power to scan the present, and as far as may be gathered from the past, the future exigencies of the subject matter of the law, and to devise the most apt and efficacious provisions, that it may not exceed the occasion, or give warrant to inconsiderate attempts to trench on the general liberty of the subject,—has a claim to undivided attention, and the benefit of an independent source.

When it is considered that, besides the over-charged duties of their respective departments, our high public functionaries are, as cabinet ministers, also charged with the duty of superintending, controlling, and sanctioning the operations of each other, it is not surprising that the government is capable of doing so little, and that the little is often so ill done.

What prudent person would desire, that men, upon whom is fixed the responsibility of determining whether laws shall be made, or measures recommended by which extensive

classes or even the whole nation, may be affected in life, liberty, or property, shall be in a perpetual state of feverishness,—that the chancellor, or other minister, after having spent the period of the day allotted to labour, in the diligent discharge of the duties of a laborious office, should be required in a state of exhaustion, to hasten to the cabinet or the legislature, to devise, debate, and determine upon laws, which would demand months of patient thought and anxious investigation to understand them in all their bearings, immediate and remote. Much of the rashness of views advanced, and the defects of measures brought forward, may be attributed to this cause. But it might be removed.

In the lower departments of the service, the evil is not the same. There is too much division of labour in them, and not enough in the higher. Those whose labour is but in a slight degree above that of the hands, have time enough, and to spare; but where the instrument is the mind, which requires quiet, leisure, and freedom from pressure unfavorable to exertion, more labour is attached to the office than any man of the utmost grasp of mind, or of the most confirmed habits of application can perform.

Here the reformers may trace the s

many of the obstacles to the progressive and prompt application of remedies to abuses as they arise or are discovered. The instruments of reform are overlaid with work—they see, confess the existence of the abuse, lament it, and promise the remedy; but, as new evils rise up to their view in rapid and almost endless succession, and all who suffer urge their own case as if it were the solitary grievance, nothing is done, and evils, whose magnitude is beyond all computation in money, are suffered to continue. Until a minister of justice is appointed, it will be impossible to arrive at unity or efficiency in the scheme of judicature, or to make any regular progress in law reform. The judicial budget would give a very sensible notion of the state of the administration of the law, and the resources at command for remodelling or reforming it. For although all things are not to be altogether measured by amount in money, or by simple numerical proportions, yet are these important ingredients in the calculation. These are the known points, the rest are unknown; and in this, as in other cases, we shall have advanced a great way towards a knowledge of the unknown, when we have an accurate notion of the known.

Nor is there any reason, in an economical view, for grudging the expense of so important a

functionary. There are several departments of state provided with Heads, who have little to do. The salaries now bestowed upon them might be devoted to this purpose, without creating more offices, or greater expense. The financial part of our judicature would, with much advantage, be brought under the notice of the House of Commons by a proper officer, and there would be some probability of effecting large savings, as well as of increasing the efficiency of our judicial establishments; for this benefit usually results from the appointment of an officer, whose name, as well as his duties, connect him with any department. His responsibility is defined in a particular manner, and he feels that his reputation rests on the distinguished discharge of his functions.

The Lord Chancellor, but for the change which has taken place in the character of his judicial functions, ought to be the officer selected for this purpose, and it might be so, if by any means his court could be restored to its original jurisdiction of deciding equitably on all those matters, for which the law had provided no remedy. The exercise of such a jurisdiction would bring under his notice the incompleteness of the laws. If the project of separating the functions of the judicial office of the Lord Chancellor, from those of his political functions

should be resumed, it would be worth while to consider whether the original compatibility of the two offices might not be restored, by reserving for his determination all matters not provided for in the legal division of our judicature, or in the equitable-legal (for the strictness of the principles of the equity courts has long since got rid of its purely equitable character) division of our courts; and by leaving all other matters—the legal to the common law courts, and the equitable-legal to the present courts of equity. Or better for the sake of unity in our system, the courts of law and equity might be assimilated to each other; destroying the anomalous distinction between the so called system of equity and that of law; and making one scheme of judicature, as well as one scheme of jurisprudence for the whole country.

If such a project were entertained there would be no addition to the public charge for our judicial system, while the usual advantages of concentration and unity would be secured.

But besides the institution of the office of Minister of Justice, or Minister of Public Instruction, there is need of subordinate agencies. Of this sort is the National Gazette. At present it is regarded as a source of revenue, and not as a means of aiding the execution of the state functions. It might be made an ex-

cellent means of keeping up the communication of the minister with every part of the country, while it would operate as a check on the conduct of all the inferior functionaries. But then the Gazette must not be charged with the enormous price of two shillings, or three shillings and sixpence, nor be edited on the most diffuse scale. It might and ought to be published at the mere cost of the paper and press-work, and a trifle, as in the case of stamps, for the remuneration of the retail vender. The advertisements would more than repay the cost of editing, and that part of the printing which is technically called the composition.

The London, or National Gazette, should contain those matters only which concern the whole kingdom, such as general laws.—It should be published daily; and every general law proposed in the legislature should be published in the first instance in the Gazette, that all interested in its enactments might know wherein they need to instruct their representatives. Decisions of cases referred to the Treasury, the Excise, and the Customs should also be recounted. The statistics in a general form of our Courts of Justice,—the actions and other cases brought,—the what done, when, and by whom,—that the public may see how its judicial institutions work.

Besides the National Gazette, local gazettes, that is, one for each county, should be established. In these should be published all information of the same kind. Every return now required to be made to the clerk of the peace at the county court,—to the sessions or other public office, should be published in this gazette.

The county should publish therein its expenditure, and the sources of revenue; the parishes should do the same. The quarter sessions and the petty should publish the names of the cases brought before them, and the results. The state of education should be exhibited by a return of the number of schools, of scholars, and the expenses. Every public charitable institution should be required to publish an account of its revenue and expenditure. The appointment of every public officer, be his rank what it may, should be signified, whether his office be national, but exercised in the county, or peculiar to the county, or parochial. All public affairs carried on by means of public money, should be regularly announced in the county gazette.

And every local or bye-law proposed by a corporation, or local body, should be published before the law is passed and when it is passed. Not as now, in vague and unintelligible terms,

before the law is determined upon in form and words, but published *ipsissimis verbis*—precisely as the law is intended to be submitted to the legislature, or the body by whom it is to be enacted.

These Gazettes, like the national one, should be sold for the mere cost of paper and press-work, and the retail dealers' charge. The advertisements, which the law now requires to be published in the local papers, would support the other cost.

It might be objected—the expense ! but the expense is incurred at present. The returns are made at present irregularly ; and imperfectly, because irregularly. Parliament, in its cellars, has accumulations of such returns ; now and then they escape, and their results are collected by the researches of laborious statisticians, or occasionally on the eve of discussing an important question. But the casual and irregular aids thus collected for the nonce, not tested by experience, and collected in many cases by the most untrustworthy agents, are not to be depended upon, and have led to one half of the blunders which crowd the debates of past legislatures. Moreover they are often false—known to be false by those who make them. Now it is proposed that what is at present done irregularly shall be done constantly more

system, and under responsibility—that the returns shall not be made to parliament to be thrown among lumber and forgotten; but made in the face of the whole county—open to the remarks of all within it—authenticated by the signature of the man by whom the return is made—and not made by favour, but by law, and subject to the penalty of loss of office, if not of honour or respectability, for a false return.

Many of the local papers, which have been accustomed to receive the public notifications, might be indemnified by a direct compensation, or by employing the proprietors, if competent, in the direction of the local gazette. This difficulty should not stand in the way of establishing a practical agency by which publicity may be secured, not by accident, but always. The government would be relieved of half of its cares by such agency, as its subordinates would be exposed to the observation of the localities in which they were placed—and the comments of the public journals. At present the operations of the law are not known, nor are there any means of knowing them, either by the state functionary, or the public, in a direct and authentic manner. The outcry is made when the offence has been detected. How many offences escape detection none can

say. Publicity is the best, perhaps the only means of aiding it, and still better, checking the occasion for it.

THE AMENDMENT OF THE LAW.

Many people laugh at the blunders of legislators; but individuals are only to blame for not struggling to remove the difficulties, which are immense. There is not, probably, a greater labour than the making of a law, in the present state of our judicature and the laws, and the means of information within reach of members; and it is not wonderful that so few attempt the work of legislating completely, seeing that the thanklessness and improbability of success are only to be matched by the labour and the cost. The cause of the *excessive* legislation that takes place, is the bit-by-bit manner of proceeding. A more deliberate and painstaking investigation at the outset would prevent the making of bad laws, and thus save one half of the amending and explaining Acts to which the hurried blundering now gives rise. And the changes which altered circumstances render necessary, would be reduced in num¹

if the legislation proceeded upon principle, instead of making petty attempts to cope with peculiar, casual, or merely incidental circumstances, which ought to be left to work their own cure.

While there is no greater mischief than a bad law, there is no greater benefaction than a good amendment; and it would be a praiseworthy object of ambition in every member to cure some one known defect in the law. There would soon be none left. But then he must value his labours according to the brevity, compactness, and simplicity of his law, rather than by its length, and breadth, and complexity.

But the difficulty at all times has been in arriving at a knowledge of defects. Every body knows of some; but then as he feels it but once, he is at no pains to remove the evil which may never befall him again, unless indeed the severity of the blow has exasperated him to an unusual stretch of exertion. For the same reason, an evil discovered by one is not known to others—they have not suffered by it. Hence there is no prevailing outcry if the evil do not touch some compact and influential body of men. The judges on the bench, and the counsel in their harangues, may a hundred times remark upon and lament the existence of the evil, and yet, as judges and counsel, are too much en-

gaged in the current business of the courts to bestow their attention on the means of applying a remedy; the evil remains, to the detriment of all who may chance to fall in its way. But as the same cause affects most evils incident to every class of law, the suitors generally, who make up the most unfortunate part of the nation, are always suffering some unnecessary wrong.

In the foregoing sections of this division of our work, we have shewn the personal agency that should be employed in the preparation of a law—the making of one—the superintending it—the promulgating it—the enforcing it: and therein we have, in effect, dealt with the mode of amending it, which is more or less involved in the whole, but especially in the first section. It may not be amiss to make use of the present section by way of recapitulating the parts of such personal agency.

It is proposed that, first, there shall be some individual or individuals employed in the preparation of the information connected with every proposed new law, before it is formally proposed to the House; that the information so prepared should be submitted to a committee, who should report on the state of the matter, with a view to guide the House as to its further determination; that if the law should

be determined upon, it should pass the usual stages of proceeding—being, however, before the second and third readings, reported upon by an officer charged with the verbal revision of its terms; that the law being passed, the heads of the department of the executive to which it relates, and other heads to be appointed specifically for the functions of public instruction, the administration of the law, religion, and justice, should superintend the promulgation of and operation of such law—for which purpose, all questions arising upon it should be reported to such chief officer by a regular body of reporters, attached to the courts of justice, and by the law officers of departments, where the matter shall be determined upon by petition or memorial, without appeal to the courts of justice. There being a systematic report of all questions arising in the courts on each branch of the law, and fixed committees of the legislature to report on such questions; the work of amendment would follow as of course.

It would not be safe to omit any one of these parts of the machinery. They should all exist, acting in connexion with each other; not for a season only, but throughout all time. The efficiency of the machine depends on its wholeness and permanence.

At intervals of fourteen or twenty years, or even fifty, as the laws become more simple and comprehensive in their nature, the alterations made in the interval might be consolidated. These amendments would be remarkably few, if the system of judicature were made uniform, and one mode of procedure were adopted in all cases. The great bulk of amendments in our present laws results from anomalies in the administration of the laws. But as there must always be need of amendments, the object should be to introduce them with the least possible risk of confusion. It has been elsewhere suggested that the chapters and sections of the statute should be numbered, in order that any additions or substitutions might be introduced without much affecting it in other respects. According to such a plan it would be better to make each addition or substitution, to any one section of the statute to which it refers, a separate Act. This is necessary, in order to guard against difficulties of construction, it being a rule that the whole Act must be taken together, in order to judge of a part. It would not be a bad plan under the present system :—at least in no amending statute should new matter be introduced, having no relation to the amendment. The Act passed last session, relating to the Management of Excise,

instance of the soundness of this rule. It consists of several distinct matters of amendment, of which no specific warning is given in the title. By inserting in the title of the statute the scope of the amendment, and by confining the body of the enactment to the matter of the amendment, it would be impossible to go wrong. If this plan had been pursued in the present law, the statute would have been divided into *five Acts*; each of which might, without confusion, have been appended to the main body of the Law of Excise. It is the neglect of such a rule that makes it necessary to refer to and fro from one statute to another, and creates so much confusion when it is necessary to repeal only a part of the statute. This gives rise to the abundance of dead and useless matter that encumbers the statute book long after it has ceased to be law. Whether the general practice is the result of design in any case it would be rash to pronounce. There are few bills which do not comprise many objects;—which has the effect of depriving the legislature and the country of fair notice of what is going forward. Hence, too, bills which contain useful objects are resisted, because they are combined with useless or mischievous ones. Further, the debates become a jumble of unfairness and irrelevancy, where there is no issuable point on which a

decision can be taken. Without an improvement on this point, our laws must always be confused: the work of consolidation will ever remain to be done in some form or other.

It is not uncommon to charge upon the earnest reformer that he proposes too much. When a man suggests that a lofty ladder should be ascended without using the lower steps that are within reach, he may be liable to this charge. But however lofty the ladder may be, if he points out how, by ascending each step, the top of it may be reached in safety, the case is surely reversed. An attempt has been made, in this part of the work, to point out both the object and the means. It is not the fault of the author that the reforms required are so extensive and various, but it would have been his fault, and a grave one, if, from fear of the imputation of proposing too much, he had abstained from proposing whatever his investigations had discovered to be necessary. His position would have been not unlike that of a timid or crafty architect, who under-estimates the cost of the undertaking in order to encourage his employer to embark in it; and in the result reaps, as he deserves, a harvest of discredit, in the disappointment of the expectations which he has raised. All that is here suggested is necessary. Whether the resources, or the opportunities of any part

power, will permit so extensive a work to be performed, the author must not pretend to determine. It is at least proper that the impracticabilities of the case, which may arise from lack of power or lack of opportunity, should be distinguished from those which are inherent in the plan itself. When once we have resolved that we are only in Archimedes' plight, of wanting a spot whereon to fix our machinery, it may not be past finding out that the spot is within our reach.

PART V.

PARALLEL ILLUSTRATIONS.

- 1. CHIMNEY SWEEPERS' REGULATION ACT.**
- 2. EXCISE SPIRIT DUTIES' ACT.**

PARALLEL ILLUSTRATIONS.

THE present part is devoted to the exhibition of parallel illustrations of the law, as it is, and as it might be, with very few and slight changes for the better; often indeed, without any change at all, beyond the rigid adherence to the principles that are now allowed, and to the best methods that may be and are sometimes employed.

The first specimen is from a class of legislation for which we are distinguished, viz., interference with particular trades, with a view to their regulation in some points or all.

The second is a government measure, of a sort nearly as frequent, viz., laws relating to taxation.

A remark made in another part of the book must be borne in mind :—no single Act, perhaps, embodies all the defects generally attributed to our statute law; yet there are few which have not more than one, where the length of the Act gives room for them.

The illustrations here given have not been selected. They were the first which happened to present themselves on opening the book of last year's statutes, when this work was commenced. They are not therefore by any means the worst. Indeed, in order to exhibit the richest specimens, it would have been necessary to have taken the longest; but then, this book must have been nearly as big as a volume of the statutes, as heavy and as costly, and fewer would read than would buy. Besides, the examples would not have been so various. If any one doubts the magnitude of the defects, which this little book is meant to indicate rather than exhibit, let him buy for some four and twenty shillings the statutes of last session in sheets; arrange them according to the classification, furnished in the chapter on that head, and take them one by one, with pen in hand, and the result of his labours will be a thorough conviction that there can scarcely be a greater sin than the sin of wordiness. There are few who have the courage to go through with such a work: to others, these specimens are offered. The first example is the Chimney-sweepers' Regulation Act.

This Act is faulty in every particular. It is double in its object. It is ill-arranged. It is wordy. It is full of unnecessary provisions.

Subordinate parts are made to have the prominence of principal ones. It is not consistent with itself.

It is double in its object. It is an Act for the better Regulation of Chimney Sweepers and their Apprentices, and it is an Act "for the Safer Construction of Chimneys and Flues." These two objects, distinct in nature, however they may coincide in a single purpose, ought to have been made the subjects of different enactments. Nothing can prevent the people from giving short or nick-names to Acts of Parliament, as to other things, for the purpose of helping the memory and shortening explanation. In consequence, such an act as this goes by the name of the Chimney-sweepers' Act;—and the chimney-sweepers have, so far, notice of a law which it concerns them to know. But what notice have the bricklayers? The assumption of one popular name excludes another; and by the fact that the Act is called the Chimney-sweepers' Act, the bricklayers have full warranty for supposing that it is not meant to concern them. A dangerous conclusion indeed, since their disobedience of its provisions will subject them to a penalty of one hundred pounds, "to be recovered with full costs of suit, by any person who shall sue for the same in any of His Majesty's Coi

Record, at Westminster ;"—and that means £50 or £60 more.

It is ill-arranged. There is no well-ordered sequence of parts that shall lead on the meaning. Nothing to shew that the author had a context in his own mind. It is disjointed, and disconnected. Take the Analysis in the order of the Act.

1. 28 Geo. III., cap. 48, recited and repealed.

2. No child under ten years to be apprenticed to a chimney-sweeper.

3. Chimney-sweepers taking apprentices to be householders.

4. Indentures of boys under ten years of age to be void.

5. Indentures executed previous to the passing of this Act to remain in force.

6. Apprentices under 14 years of age to be so designated by a brass plate on a leathern cap.

7. Penalty on Chimney-sweeper for employing children under 14 years of age, not apprentices.

8. Requiring any person to ascend a flue to extinguish a fire, a misdemeanor.

9. Binding or assignment of apprentices to Chimney-sweepers shall take place by consent of two Justices, to be indorsed on the indenture.

10. Age of the Apprentice to be inserted in indenture.

11. Boys not to be let out to hire.

12. Boys to have a Trial of the business previous to being apprenticed.

13. Justices to examine boys who have been upon Trial before binding, and if boys are unwilling, shall refuse their sanction.

14. Limitation of boys on Trial.

15. Streets not to be hawked or called by Chimney-sweepers.

16. Apprentices not to be ill-treated by their employers.

17. Complaints preferred by apprentices or their employers to be inquired into by Justices.

18. Materials and construction of chimneys and flues particularly directed. Regulations as to angles and flues. Chimneys of a certain construction may be built at angles.

19. Convictions to be made before two Justices.

20. Penalties, how to be levied and applied.

21. In default of payment of penalty, parties convicted to be sent to prison.

22. Inhabitants may be witnesses.

23. Distress not to be deemed unlawful for want of form. Plaintiff not to recover for any irregularity, if tender of sufficient amends be made.

24. Appeal.

25. No conviction to be quashed for want of form, or to be removable by certiorari.

26. Term (Duration) of Act.

27. Act may be altered this Session.

Then follows a

SCHEDULE

Containing a form of Indenture, and also a form of
Approbation by Justices.

In order to test this Analysis, we must consider of what elements the Act consists, having dismissed all that relates to chimney making.

The points are, that no very young children should be Chimney-sweepers, that the masters should be known and responsible persons—that the apprentice should not be kidnapped, but should have full opportunity of trying the business and his master,—that this opportunity should be secured by the superintendence of Justices; and finally, that they should concur in the deed of apprenticeship. All these points, which form the substance of the Act, ought to have been proceeded with at first, and in context. They are contained in the 2d. 3d. 9th. 10th. 11th. 12th. 13th. 14th. clauses; and the 13th. and 14th. clauses containing matters upon which the matter of the 9th and 10th depends

ought to have preceded the latter; but the proper course will be better shewn by the example that will be given of an analysis of this Act, when stripped of all impertinences.

It is wordy,—of this a specimen has been given before—and the sin runs through the entire act. The wordiness is not of the most copious order, but there is sufficient to drive away simplicity.

It is full of unnecessary provisions. The 4th. the 5th. the 17th. are wholly unnecessary, and the 19th. the 20th. the 22d. the 23d. the 24th. the 25th. the 26th. and the 27th. ought to be made unnecessary by a general law providing for such particulars. These with the chimney-making clause would amount to 12 clauses, being nearly one half of the Act.

Subordinate parts are made to have the prominence of principal ones. The 6th. clause relating to the leathern caps and brass plates—the 11th. relating to the letting out boys to hire,—the 15th. as to calling the streets,—the 16th, as to the ill-treatment of the apprentices by their employers, are all subordinate or consequential. They are reinforcements of the main enactment, and should have followed as such.

But all these points will receive fuller illustrations from the Act itself. The printing on

the left hand is the Act in its actual form. The right hand suggests abbreviations of it, supposing the present form to be adhered to, with comments on those parts which should either have been omitted, or have found a place in another Act; after which will follow an Act for the same purpose as it should be, stripped of whatever does not belong to the principal object.

The most singular part of this Act is its want or rather negation of principle. It is an Act for the regulation of chimney sweeper's apprenticeships; but are there no other apprenticeships which require a similar regulation? For instance, the apprenticeship of paupers is beset with difficulty, and is one which now embarrasses the Poor Law Commissioners. They are wholly at the mercy of overseers; may be thrust upon any person, whether he have or not any business in which to instruct them, and from the want of an efficient control and superintendence, he may treat them with cruelty. Unfortunately the sympathy of the public has not set in favour of the pauper apprentices.

When this shall be, the regulations of this Act will be found to be apt for the general purpose of all apprenticeships, as well as for the particular purpose of chimney sweeper's apprenticeships.

This want of principle is not peculiar to this

Act;—it is the chief defect of all our laws of trade regulation. The instance is commented upon as illustrative of the common nature.

It will occur to those who are now engaged in examining the expense of printing our public documents, that Acts of parliament will cost less in printing when all that is unnecessary has been dispensed with. This is a point exemplified in the following illustrations.

There are several roundabout expressions in the Chimney-sweeper's Act, which have been rejected or marked for rejection. If the omission be likely to give rise to any doubt, those expressions ought to be inserted in an interpretation or construction clause. The version of the Chimney-sweepers' Act, given a few pages further on, will show whether there is any occasion for such special interpretation.

The italics point out the words that may be struck out. It will, however, be occasionally found, that in order to complete the sense it is necessary to make a slight alteration, either by adding or substituting other words or phrases.



ANNO QUARTO & QUINTO
GULIELMI IV. REGIS.

CAP. XXXV.

“ An Act for the better Regulation of Chimney Sweepers
“ and their Apprentices, and for the safer Construction
“ of Chimneys and Flues.

[25th July, 1834.]

“ WHEREAS an Act was passed in the Twenty-
“ eighth Year of the Reign of *His late Majesty* King
“ George the Third, intituled ‘ An Act for the better
“ Regulation of Chimney Sweepers and their Appren-
“ tices’ the Provisions whereof have been found in-
“ sufficient to *guard and* protect Children of tender
“ Years apprenticed to Chimney Sweepers against
“ *various* Casualties incident to the *Practice of* cleans-
“ ing Flues by climbing: Be it therefore enacted,
“ by the King’s most Excellent Majesty, by and with
“ the Advice and Consent of the Lords Spiritual and
“ Temporal, and Commons, in this present Parlia-
“ ment assembled, and by the Authority of the same,

CHIMNEY SWEEPERS' ACT.

FOURTH AND FIFTH YEARS OF
KING WILLIAM THE FOURTH.

CHAP. 35.

An Act for the better Regulation of Chimney Sweepers and their Apprentices, until the 1st day of January, 1840, and thence until the end of the next Session of Parliament. [25th July, 1834.]

“ WHEREAS an Act was passed in the Twenty-
 “ eighth Year of the Reign of King *George* the Third,
 “ intituled ‘ *An Act for the better Regulation of Chim-*
 “ *ney Sweepers and their Apprentices,*’ the Provisions
 “ whereof have been found insufficient to protect
 “ Children of tender Years apprenticed to Chimney
 “ Sweepers against Casualties incident to the cleans-
 “ ing Flues by climbing: Be it therefore enacted, by
 “ the King’s most Excellent Majesty, by and with
 “ the Advice and Consent of the Lords Spiritual and
 “ Temporal and Commons, in this present Parliament
 “ assembled, and by the authority of the same, That
 “ the said Act shall be repealed.

“ That *from and after the passing of this Act* the said
“ Act of the *Twenty-eighth Year of the Reign of His*
“ *said late Majesty* shall be *and the same is hereby*
“ repealed.

II. “ And be it *further enacted*, That *from and*
“ *after the passing of this Act* no Child *who shall not*
“ *have attained the Age of Ten Years* shall be *bound*
“ *or put* Apprentice to any Person *using the Trade or*
“ *Business of a Chimney Sweeper.*

III. “ And be it *further enacted*, That *from and*
“ *after the passing of this Act* no Chimney Sweeper
“ *or other Person* who shall not be a Housekeeper in
“ the *Parish or other Place* in which such Chimney
“ Sweeper *or other Person* shall reside, and be rated
“ to the Relief of the Poor *of such Parish*, or assessed
“ for *Payment of Taxes* in such *other Place*, shall
“ *take or be deemed* capable of taking an Apprentice
“ *to learn or practise the Business of a Chimney*
“ Sweeper, *or, of employing in such Trade* any Child
“ under the age of Fourteen Years.

IV. “ And be it *further enacted*, That all Inden-
“ tures, Covenants, Promises, and Bargains hereafter
“ to be made or taken of or for the hiring, taking,
“ employing, retaining, or keeping of any Child *who*
“ *shall be* under the Age of Ten Years, as *or in the*
“ *Nature of an Apprentice or Servant* in the Capacity
“ of a Chimney Sweeper, shall be *absolutely void in*
“ *Law to all Intents and Purposes.*

V. “ Provided always, and be it *further enacted*,
“ That *nothing* in this Act contained shall extend, *or*
“ *be deemed, taken, or construed to extend*, to vacate *or*

II. " And be it enacted, That no Child under
" Ten Years of age shall be Apprenticed to any Chim-
" ney Sweeper."

III. " And be it enacted, That no Chimney
" Sweeper who shall not be a Housekeeper in the
" Place in which he shall reside, and be rated to the
" Relief of the Poor, or assessed for Taxes in such
" Place, shall be capable of taking an Apprentice or
" employing as a Chimney Sweeper, any Child under
" the Age of Fourteen Years."

[No conventions between individuals can make
that valid, which the law has expressly invalidated.
All such " indentures, covenants, promises, and bar-
gains," are therefore void, without the help of this
express declaration.]

[The repeal of an Act does not repeal any thing
which has been done under that Act while it re-
mained in force, unless it be so expressed in terms,

“ *cancel* any Indenture of Apprenticeship that shall
 “ have been *actually* in conformity with the *said* re-
 “ cited Act *made and* executed previous to the passing
 “ of this Act for *binding* any Boy as an *Apprentice* to
 “ any *Person using the Trade of* a Chimney Sweeper,
 “ but that such Indenture of *Apprenticeship* shall *in*
 “ all respects continue and be in as full Force and
 “ *Effect as if this Act had not been passed.*

“ VI. Provided always, and be it enacted, That
 “ every *Person using the Trade of* a Chimney Sweeper
 “ having or retaining or employing in his Service
 “ any *Apprentice or Apprentices* who shall be under
 “ Fourteen Years of Age, shall provide for *each such*
 “ *Apprentice*, so long as he shall remain under the
 “ *Age of Fourteen*, a Leathern Cap, to be worn by
 “ such Apprentice when out upon his Duty, having
 “ a Brass Plate set or affixed on the Front thereof,
 “ with the Name *or Names* of the Master *or Mistress*
 “ engraved thereon, and also the Name of the Ap-
 “ prentice and the Date of his Indenture of Appren-
 “ ticeship; and every Master *or Mistress* neglecting
 “ to provide *each such Apprentice in his or her Ser-*
 “ *vice, being under the Age of Fourteen, with such*
 “ *Leathern Cap and Brass Plate so affixed and en-*
 “ *graved as aforesaid*, shall for every such Offence
 “ forfeit any Sum not exceeding Five Pounds nor less
 “ than Forty Shillings.

“ VII. And be it *further* enacted, That *from and*
 “ *after the passing of this Act* no *Person in the Trade of*
 “ a Chimney Sweeper shall hire, use, retain, or em-
 “ ploy any Child under the Age of Fourteen Years,

which would be to make an *ex post facto* law ; a proceeding held in reasonable abhorrence by most persons. This clause is therefore useless.]

VI. “ Provided always, and be it enacted, That
“ every Chimney Sweeper having or retaining or
“ employing in his Service any Apprentice who shall
“ be under Fourteen Years of Age, shall provide for
“ him, so long as he shall remain under that Age,
“ a Leathern Cap, to be worn by such Apprentice
“ when out upon his Duty, having a Brass Plate set
“ or affixed on the Front thereof, with the Name of
“ the Master thereon, and also the Name of the Ap-
“ prentice and the Date of his Indenture of Appren-
“ ticeship ; and every Master neglecting so to provide
“ shall for every such Offence forfeit any Sum not
“ exceeding Five Pounds nor less than Forty Shil-
“ lings.”

VII. “ And be it enacted, That no Chimney
“ Sweeper shall hire, or use, or retain, or employ any
“ Child under the Age of Fourteen Years, other than
“ an Apprentice bound according to the Provisions

“ other than an Apprentice bound according to the
“ Provisions of or previous to the passing of this Act,
“ and also other than such Boy or Boys as shall be
“ upon trial with any Master or Mistress Chimney
“ Sweeper as *herein after provided*; and that every
“ such Person or Persons so hiring, using, retaining,
“ or employing any such Child, other than an Appren-
“ tice as *aforesaid*, or Boy on Trial as *aforesaid*, shall
“ for every such Offence forfeit any Sum not exceeding
“ Ten Pounds nor less than Forty Shillings.

VIII. “ And be it *further* enacted, That any Person
“ or Persons requiring or compelling any Apprentice
“ or Person of any Description to ascend a Chimney
“ Flue for the Purpose of extinguishing Fire therein
“ shall be *held and adjudged to be* guilty of a Misdemeanor, and be liable to be proceeded against *accord-*
“ *ingly*.

IX. “ And to the end that the Age and Time of the
“ Continuance of Service of every Apprentice bound
“ pursuant to the Provisions of this Act may certainly
“ appear, be it *further* enacted, That every Binding
“ of a Child as an Apprentice to any Person using or
“ carrying on the Trade of a Chimney Sweeper, and
“ whether such Binding shall be by a Parish Officer
“ or by the Parent or next Friend of the Child, and
“ also every Assignment of such Apprentice, shall
“ take place *by and* with the Consent of Two of His
“ Majesty's Justices of the Peace acting in and for any
“ County, Stewartry, Riding, City, Town Corporate,
“ Borough, Division, or Place within the United
“ Kingdom of Great Britain and Ireland such Consent

“ of or previous to the passing of this Act, and also
“ other than such Boy or Boys as shall be upon Trial
“ with any Master Chimney Sweeper; and that every
“ Person shall for every Offence herein forfeit any
“ Sum not exceeding Ten Pounds nor less than
“ Forty Shillings.

VIII. “ And be it enacted, That any Person re-
“ quiring any other Person to ascend a Chimney Flue
“ for the Purpose of extinguishing Fire therein shall
“ be guilty of a Misdemeanor.

IX. “ And to the end that the Age and Time of the
“ Continuance of Service of every Apprentice bound
“ pursuant to this Act may certainly appear, be it
“ enacted, That every Binding of a Child as an Appren-
“ tice to any Chimney Sweeper, whether by a Parish
“ Officer or by the Child's Parent or next Friend, and
“ also every Assignment of such Apprentice, shall take
“ place with the consent of Two of His Majesty's Jus-
“ tices of the Peace, to be signified by them in Writing
“ under their Hands, indorsed on the Indenture of
“ Apprenticeship or any Assignment thereof; and
“ every Indenture or Assignment not being in the Form
“ prescribed in the Schedule hereto, or not having such
“ Consent so indorsed thereon and signed shall be null.”

“ *and Approbation* to be signified by *such Justices* in
 “ Writing under their Hands, indorsed on the Inden-
 “ ture of Apprenticeship or any Assignment thereof,
 “ *such Indenture and Consent respectively to be accord-*
 “ *ing to the Forms prescribed in the Schedule hereunto*
 “ *annexed* ; and every Indenture or Assignment *which*
 “ *shall not be in the Form so prescribed, or shall*
 “ *not have such Consent so indorsed thereon and*
 “ *signed as aforesaid, shall be absolutely null and void.*

X. “ And be it *further* enacted, That the Age of
 “ every such *Child so to be bound* Apprentice shall be
 “ mentioned *and inserted* in such Indenture, being
 “ taken *truly* from the Copy of the Entry in the Register
 “ Book wherein the Time of his being baptized is or
 “ shall be entered (where the same can or may be
 “ had), which Copy shall be given and attested by
 “ the Minister, *Vicar, or Curate* of the Parish or
 “ Place wherein such Child's Baptism shall be regis-
 “ tered, without Fee or Reward, *and may be written*
 “ *upon Paper or Parchment* ;* and where no such
 “ Copy of any Entry of such Child being baptized

* It must not be written upon stone. This is ridiculous. How could it occur to any body, but for this provision, that the certificate would be given in another manner. The expression, however, might have been intended to mean that the certificate may be written either upon paper or parchment. The excess of expression tends to create an appearance of a want of precision in other directions. Neither too much nor too little must be said. The exact meaning and no more ought to be expressed.

[In some Acts of Parliament it is declared, in a single clause, once for all, that the forms given in the Schedule shall be followed, in relation to the matters of the Act, so far as the circumstances will permit. In that case a simple reference, as 'see Schedule A or B,' is sufficient. The inference would appear to be so obvious as not to require a clause for the purpose, but that is better than enlarging many clauses by a verbose reference in each case.]

[Such clauses as this form the puzzles of our legislation. Mere regulation of the sort ought not to have so prominent a character. It would be well to print them in *Italics*, to show that they are not of the substance of the law. The clause might have made two or three, and much simplicity would have been gained.]

CHIMNEY SWEEPERS' ACT.

" can be had, such Justices of the Peace shall as fully
 " as they can inform themselves of his Age, and from
 " such Information shall insert the same in the said
 " Indenture; and the Age of such Child so inserted
 " and mentioned in the *said* Indenture (in relation to
 " the Continuance of his Service) shall be taken to
 " be his true Age without *any* further proof thereof.
 XI. " And be it further enacted, That no Person
 " exercising the Trade or Business of a Chimney
 " Sweeper shall let out to Hire by the Day or other-
 " wise, to any other Person, for the Purpose of
 " Chimney sweeping, any Child already an Apprentice
 " or that shall hereafter be bound Apprentice under
 " the Directions of this Act.
 XII. " And whereas it is advisable that before any
 " Boy shall be bound by Indenture to learn the Busi-
 " ness of a Chimney Sweeper, a previous Trial of such
 " Business should take place on the Part of the Boy,
 " under proper regulations; be it therefore further
 " enacted, That before any Boy shall be bound as an
 " Apprentice by Indenture as herein provided, it shall
 " be lawful for the intended Master of such Boy to
 " have and receive such Boy in such Master's House
 " upon Trial for any Time not exceeding Two Calen-
 " dar Months from the Commencement of such Trial,
 " and during such Period of Trial to permit and suffer
 " such Boys to ascend Chimneys and to work in all
 " respects as an Apprentice in the said Business of
 " a Chimney Sweeper: Provided always, that before
 " the Commencement of such Trial such Boy, with
 " his Parent, next Friend or Guardian, or Parish

[This clause is sadly misplaced. It hangs not on what preceded it, nor on what follows. It should have followed the 7th clause.]

[This clause is quite out of place. See the Act as newly modelled a few pages further on.]

“ Be it enacted, that before any boy shall be apprenticed, the intended master may have him in his house upon trial for any time not exceeding two calendar months, and permit him to ascend chimnies and to work as a Chimney-sweeper. Provided always, that before such trial the boy, with his parent, next friend, or guardian, or parish officer, and such intended master, shall go before two Justices, and shall register with their clerk the name and residence of the intended master, and also the name, residence, and age of such boy and the names and residences of the persons accompanying him, and also the intended period of trial which shall commence on the day after such registry, and shall not exceed two calendar months. Prov

" Officer, and such intended Master, shall go before
" any Two Justices of the Peace acting in and for the
" County, Stewartry, Riding, City, Town Corporate,
" Borough, Division, or Place where such intended
" Master shall reside, and shall enter and register
" with the Clerk to the said Justices the Name and
" Residence of the intended Master, and also the
" Name, Residence, and Age of such Boy, and the
" Names and Residences of the Parties accompanying
" such Boy, and also the intended Period of Trial,
" which shall be deemed to commence on the Day
" after such Entry and Register, and shall not exceed
" the Term of Two Calendar Months from such Day:
" Provided also, that such Boy shall at the Com-
" mencement of such Trial be of the full Age of Ten,
" Years, to be ascertained as herein directed in other
" Cases.

XIII. " And be it further enacted, That the Jus-
" tices of the Peace before whom any Boy shall be
" brought for the purpose of being bound to a Chim-
" ney Sweeper, and which Boy shall have been upon
" Trial with the intended Master or Mistress, shall
" ascertain from such Boy whether he is willing and
" desirous to follow the Business of a Chimney
" Sweeper, and to be bound to such Master or Mis-
" tress; and in case such Boy shall be unwilling to be
" bound, such Justices shall and they are hereby re-
" quired to refuse to sanction or approve of such
" Binding.

XIV. " And be it further enacted, That no Master

“ also, the boy shall at the commencement of such
“ trial be of the full age of ten years, to be ascertained
“ as herein directed in other cases.”

[The first proviso in this clause is not a proviso, but part of the substantial provision, without which the rest is incomplete. The expression, “ it shall be lawful,” leaves it doubtful whether the clause is permissive or imperative. The former is the natural impost, and that is introduced into the more popular version. This phrase has often given rise to grave doubts in our Courts of Justice, yet nobody in the legislature has attempted to remove the cause of them, which comes from what the lawyers would call a want of privity between our legislature and judicature. The second proviso in this clause seems scarcely necessary, as it is the basis and first provision of the Act, that no child under ten years of age shall be employed as a Chimney-sweeper.]

XIII. “ And be it enacted, that the Justices,
“ before whom any boy shall be brought at the
“ expiration of the trial for the purpose of being
“ bound, shall ascertain from him whether he is
“ desirous to be a Chimney-sweeper, and to be bound
“ to such master; and in case the boy shall be
“ unwilling, the Justices shall not sanction such
“ binding.”

XIV. “ And be it enacted, That no Chimney

“ or *Mistress* Chimney Sweeper shall have more than
“ Two Boys at any one Time on Trial, as *herein-before*
“ provided, nor more than Four Apprentices at one
“ and the same time.

XV. “ And be it *further* enacted, That *from and*
“ *after the passing of this Act it shall not be lawful for*
“ any Master or *Mistress* Chimney Sweeper, or for any
“ Journeyman, Servant, or Apprentice of any Chimney
“ Sweeper, or for any Person *whosoever acting as a*
“ Chimney Sweeper to call or hawk the Streets in any
“ City, Town, or Village, or elsewhere, for Employ-
“ ment in his or her Trade as a Chimney Sweeper;
“ and if any Person, Chimney Sweeper, Journeyman,
“ Servant or Apprentice, shall offend herein, he shall
“ be subject and liable for every such Offence to
“ forfeit and pay a Sum not exceeding Forty Shil-
“ lings.

XVI. “ And be it *further* enacted, That if any such
“ Master or *Mistress* shall misuse or evil-treat his or
“ her Apprentice, or if the *said* Apprentice shall have
“ any just Cause to complain of the *Forfeiture* or
“ Breach of any of the Covenants, Provisions, or
“ Agreements to be expressed and contained in the
“ Indenture, according to the Forms in the Schedule
“ hereunto annexed, on the Part and Behalf of such
“ Master or *Mistress*, then and in such Case such
“ Master or *Mistress*, being convicted thereof, shall
“ forfeit and pay for every such Offence any Sum

“Sweeper shall have on Trial more than Two Boys
“nor more than Four Apprentices at the same Time.”

[A very reasonable objection may be taken to this clause,—that it is partial in its operation. Why should not all cries be abolished? is to the chimney sweeper a natural inquiry. It seems to be unnecessarily harsh, as the regulations respecting apprenticeship are likely to be effectual. The disadvantages of the poor man, who has only a cellar in an unfrequented lane or court, are aggravated. He loses his only means of obtaining an honest livelihood in losing his only advertisement. Under this clause a poor boy has been convicted for calling “sweep” at six o'clock in the morning, in order to wake the drowsy maids in the attics. It is humbly submitted to their worships that this construction is within neither the letter nor the spirit of the clause, which forbids *hawking* the streets,—not calling the maids.]

XVI. “And be it enacted, that if any Chimney-sweeper shall ill-treat his apprentice, or if the apprentice shall have cause to complain of the breaches of any of the agreements to be expressed in the indenture of apprenticeship on the part of such master, then such master shall forfeit for every such offence any sum not exceeding £10 nor less than 40s.”

" not exceeding Ten Pounds nor less than Forty Shillings.

XVII. " And be it further enacted, That it shall and may be lawful for any Two or more Justices of the Peace, and they are hereby authorised and empowered, to inquire into, and examine, hear, and determine, all Complaints of hard or ill Usage exercised by the several and respective Masters or Mistresses towards their Apprentices, whether such Complaints be preferred by any such Apprentice or Apprentices, or by any other Person, and also all Complaints of Masters or Mistresses against such Apprentice or Apprentices, and to make such Orders therein respectively as any Justice or Justices is or are now enabled by Law to do in other Cases between Masters and Apprentices.

XVIII. " And whereas it is expedient that for the better Security from Accidents by Fire or otherwise an improved Construction of Chimneys and Flues should hereafter be adopted; be it therefore further enacted, That all Withs and Partitions between any Chimney or Flue which at any time after the passing of this Act shall be built or rebuilt shall be of Brick or Stone, and at least equal to Half a Brick in Thickness; and every Breast, Back, and With or Partition of any Chimney or Flue, hereafter to be built or rebuilt, shall be built of sound Materials, and the Joints of the Work well filled in with good Mortar or Cement, and rendered or stuccoed within; and also that every Chimney or Flue hereafter to be built or rebuilt in any Wall, or of greater Length

[This might be done under the existing Law of Apprenticeship. The clause is therefore unnecessary, except it be intended to prevent the specialty character of the last preceding clauses from taking it out of the operation of the General law, and then it should have been so expressed.]

[This is the Chimney-making clause, which should have formed a separate Act. It ought to have been abridged by the omission of the words printed in italics, but by a slightly different typographical arrangement its clearness would be still further secured.]

For the better security from accidents by fire or otherwise, be it enacted, that all chimneys and flues hereafter built or rebuilt shall be built according to the following regulations, viz:—

1. All withs and partitions shall be of brick or stone, and at least half a brick in thickness.
2. Every breast, back, with, or partition shall be built of sound materials, and the joints of the work well filled in with good mortar or cement, and rendered or stuccoed within.

“ than four Feet out of any Wall, not being a circular
“ Chimney or Flue of Twelve Inches in Diameter,
“ shall be in every Section of the same not less than
“ Fourteen Inches by Nine Inches; and no Chimney
“ or Flue shall be constructed with any Angle therein
“ *which shall be* less obtuse than an Angle of One
“ hundred and twenty Degrees, and every salient or
“ projecting Angle in any Chimney or Flue shall
“ be rounded off Four Inches at *the* least; upon pain
“ of Forfeiture, by every Master Builder or other
“ Master Workman who shall make *or cause to be*
“ *made* such Chimney or Flue, of the Sum of One
“ Hundred Pounds, to be recovered, with full Costs
“ of Suit, by any Person who shall sue for the same
“ in any of His Majesty's Courts of Record at *West-*
“ *minster*: Provided nevertheless, and be it enacted,
“ That *nothing in* this Clause *contained shall be con-*
“ *strued* to prevent Chimneys or Flues being built at
“ Angles with each other of Ninety Degrees and
“ more, such Chimneys or Flues having therein pro-
“ per Doors or Openings not less than Six Inches
“ square.

XIX. “ And be it *further* enacted, That all Con-
“ victions for Penalties and Forfeitures by this Act
“ imposed *for any offence against the same* shall be
“ made by any Two or more Justices of the Peace,
“ either by Confession of the Offender or upon the
“ Oath or Affirmation of One or more credible
“ Witness or Witnesses.

XX. “ And be it *further* enacted, That all Penalties

3. Every chimney or flue in any wall, or of greater length than four feet out of any wall not being a circular chimney or flue of twelve inches in diameter, shall be in every section of the same not less than fourteen inches by nine inches.
4. No chimney or flue shall be constructed with any angle therein less obtuse than an angle of one hundred and twenty degrees.
5. Every salient or projecting angle in any chimney or flue shall be rounded off four inches at least.

And every master builder or other master workman who shall neglect any of the foregoing regulations in building or rebuilding any chimney or flue, shall forfeit £100 to be recovered with full costs of suit by any person who shall sue for the same, in any of His Majesty's Courts of Record, at Westminster. Provided nevertheless, that this clause shall not prevent chimnies or flues being built at angles with each other of ninety degrees or more, such chimnies or flues having therein proper doors or openings not less than six inches square.

[This clause ought to be part of a general law regulating petty procedure. What signifies it to any one how the penalty is enforced, provided it be done in a just manner, and no distinction is made between his case and that of other men. It is sufficient for him to know what he is forbidden to do, and the consequences.]

[A similar remark applies to this cl

“ and Forfeitures by this Act imposed *for any Offence*,
“ *Neglect, or Default against the same*, and the Costs
“ and Charges attending the Recovery thereof, shall
“ be levied by Distress and Sale of the Goods and
“ Chattels of the Offender *or Person liable or ordered*
“ *to pay the same respectively*, by Warrant under the
“ Hands and Seals of Two or more Justices of the
“ Peace* *acting for the County, Stewartry, Riding,*
“ *City, Town, Borough, Division, or Place where the*
“ *Offence, Neglect, or Default shall happen*, rendering
“ the Overplus of such Distress and Sale (if any) to
“ the Party *or Parties*, after deducting the Charges
“ of making the same, which Warrant such Justices
“ *are hereby empowered and required to grant*, upon
“ Conviction of the Offender, by Confession or upon
“ Oath or Affirmation of One or more Credible Wit-
“ ness or Witnesses, or upon Order *made as afore-*
“ *said*; and the Penalties, Forfeitures, Costs, and
“ Charges, when *so* levied, shall be paid, the one
“ Half to the Informer, and the other Half to the
“ Overseers of the Poor of the Parish, Township, or
“ Place where the Master *or Mistress* of such Ap-
“ prentice or Servant shall dwell *and inhabit*, to be
“ by such Overseers applied in aid of the Rate *raised*
“ *for the Relief of the Poor* of such Parish, Town-
“ ship, or Place, or, in case there shall be no such
“ Overseer, to His Majesty.

* The Justices who are not otherwise described are
always the Justices acting for the District.

method of proceeding should correspond with that pursued in other like cases.

[The division of the penalties is of some importance. Whatever share may be allotted to the informer the rest should be allotted partly to the parish, partly to the county, and partly to the crown, in order to secure the surveillance of each of these parties which would be naturally effected by means of the accounts of the penalties. Such accounts would be a species of meter of the working of the law in all parts of the country.]

XXI. " And be it *further* enacted, That the Justices of the Peace by *whom any Person shall be convicted and adjudged to pay any Sum of Money for any Offence against this Act*, may adjudge that such Person shall pay the same, together with Costs, either immediately, or within *such Period as the said Justices shall think fit*, and that in default of Payment at the Time appointed such Person shall be imprisoned in the Common Gaol or House of Correction (with hard Labour), *as to the said Justices shall seem meet*, for any Time not exceeding Two Calendar Months where the Amount of the Sum forfeited or of the Penalty imposed, together with the Costs, shall not exceed Five Pounds, and for any Term not exceeding Three Calendar Months in any other Case; the Commitment to be determinable in each of the Cases *aforesaid* upon Payment of the Amount and Costs.

XXII. " And be it *further* enacted, That no Inhabitant of any Parish, Township, or Place, shall be deemed an incompetent Witness in any *Suit, Action, Information, Complaint, Appeal, Prosecution, or Proceeding to be had, made, prosecuted, or carried on* under the authority of this Act for any Offence committed within such Parish or Township or Place, by reason of *such Person* being rated or assessed to, or liable to be rated or assessed to, or being otherwise interested in, the Rates or Assessments of any such Parish, Township, or Place,

[This alternative punishment, in default of the payment of the penalty, ought to be expressed, together with the penalty, so that the proportions might be clearly discerned. What relation has two months to a £5 penalty or three months to a £10 penalty, which is the highest that can be inflicted by the Justices under this Act?—The Justices ought to declare the sum to be paid. The imprisonment in default of payment would follow in its proportion. Say the penalty was 40s.—that would make two-fifths of the period of punishment allotted to the offence by the Act;—or of sixty days, twenty-four days; £1 would answer to twelve days; £2 to twenty-four; £3 to thirty-six; £4 to forty-eight; £5 to sixty: a rule of proportion which is easily calculated.]

[This, too, should be a part of a general law. The interest which an inhabitant could have in such penalties is by far too remote to influence his testimony. The law of evidence requires both consideration and revision. A statute devoted to it would relieve the general law of much difficulty. The decisions upon the subject are numerous enough to enable the legislature to deal with it effectually.]

XXIII. " And be it *further* enacted, That where
" any Distress shall be made for any Sum *or Sums* of
" Money to be levied *by virtue of* this Act, the Distress
" itself shall not be *deemed* unlawful, nor the Party
" *or Parties* making the same be *deemed* a Trespasser
" *or Trespassers*, on account of any Default or Want
" of Form in any Proceedings relating thereto, nor
" shall the Party *or Parties* distraining be deemed a
" Trespasser *or Trespassers ab initio*, on account of
" any Irregularity which shall be afterwards done by
" the Party *or Parties* distraining, but the Person *or*
" *Persons* aggrieved by such Irregularity may recover
" a full Satisfaction for the special Damage in an
" Action on the Case, to be brought in some of the
" Courts of Record at *Westminster* or *Dublin*, or by
" Action raised or Complaint preferred in any Court
" of Session in *Scotland*: Provided always, that no
" Plaintiff *or Plaintiffs* shall recover in any Action
" for any such Irregularity, Trespass, or wrongful
" Proceeding, if Tender of sufficient Amends shall be
" made by *or on the Behalf of* the Party *or Parties*
" who shall have committed *or caused to have been*
" *committed* any such Irregularity or wrongful Pro-
" ceedings before such Action or Complaint brought ;
" and in case no such Tender shall have been made,
" *it shall and may be lawful for* the Defendant *or*
" *Defendants* in any Action by Leave of the Court
" where such Action shall depend, at any Time
" before Issue joined, to pay into Court such Sum of
" Money as he or they shall see fit, whereupon such
" Proceedings *or Orders and Judgments* shall be had,

[This is another instance of the want of a general law. Let the reader suppose some hundred cases requiring the remedy by distress to be employed, and the repetition of this clause in each case—will not be surprised to learn that the statutes of the last few reigns exceed in bulk those of all former reigns. “The Acts of the English Parliament, from Magna Charta to James II. are comprised in two volumes, containing the laws of four centuries and a half, while nearly forty volumes have been filled with the public Acts alone of the last one hundred and fifty years.”* The ratio has increased with each reign. The policy of this clause is correct enough. Equal justice should be rendered to both the official and the subject. The one ought not to be oppressed by a wanton abuse of power, nor the other punished for a merely informal mode of exercising an useful authority. But then it should be provided for by a comprehensive law, avoiding all special law.]

[Conceive the puzzle of a poor Chimney-sweeper reading the Act. Thomas Hood's portraiture of his

* Westminster Review, No. 4^f

“ *made and given in and* by such Court as in other
“ Actions where the Defendant *or Defendants* is *or*
“ *are* allowed to pay Money into Court.

XXIV. “ And be it *further* enacted, That in all
“ cases where the sum adjudged to be paid on *any*
“ Conviction shall exceed Five Pounds, or the Im-
“ prisonment adjudged shall exceed One Calendar
“ Month, any person who shall think himself [*or*
“ *herself*] aggrieved by *any* such Conviction may ap-
“ peal to the next Court of General or Quarter Ses-
“ sion which shall be holden not less than Twelve
“ Days after the Day of such Conviction for the
“ County, Riding, or Division wherein the Cause
“ of Complaint shall have arisen : Provided that such
“ Person shall give to the Complainant a Notice
“ in Writing of such Appeal, and of the Cause and
“ Matter thereof, within Three Days after such Con-
“ viction, and Seven clear Days at the least before
“ such Sessions, and shall also either remain in
“ Custody until the Sessions, or enter into a Re-
“ cognizance, with Two sufficient Sureties, before a
“ Justice of the Peace, conditioned personally to ap-
“ pear at the said Sessions, and to try such Appeal
“ and to abide the Judgment of the Court thereupon,
“ and to pay such Costs as shall be by the Court
“ awarded ; and upon such Notice being given, and
“ such Recognizance being entered into, the Justice
“ before whom the same shall be entered into shall
“ liberate such Person if in Custody ; and the Court
“ at such Session shall hear and determine the Mat-
“ ter of the Appeal, and shall make such Order

amazement hardly reaches the truth. The poor fellow may well say, "I have a silent snow nose."—*Comic Annual*, 1835.

[The Right of Appeal is taken away where the penalty does not exceed four pounds, or the imprisonment a month. It is in the power of the Justice whose conduct is to be appealed from, to supersede the higher tribunal, by limiting the penalty to four pounds ten shillings, and the imprisonment to three weeks. The injustice may be nearly as great in one case as in the other: and it needs but successive inflictions of the lesser penalty to make it greater than the maximum, and preserve the power of oppressing.]

This clause requires that the appeal shall be made to the next sessions, if there be not an interval of twelve days between the day of conviction and the occurrence of those Sessions, and then it requires that the complainant shall give notice within three days after conviction, and seven at least before such sessions. This specialty makes confounding. It is clear that if the party may not appeal to the session holden within twelve days after conviction, and he is to give notice within three days after conviction, the notice is necessarily more than seven days before the sessions. In this way quibbles and doubt are created, because the mystery raises a supposition of more being meant than is said.

There is no provision for allowing the appeal where a party has, to avoid trouble, paid the penalty.]

“ therein, with or without Costs to either Party, as
“ to the Court shall seem meet; and in case of the
“ Dismissal of the Appeal or the Affirmance of the
“ Conviction shall *order and* adjudge the Offender to
“ be punished according to the Conviction, and to
“ pay such Costs as shall be awarded, and shall,
“ if necessary, issue Process for enforcing such Judg-
“ ment.

XXV. “ And be it *further* enacted, That no Con-
“ viction or Adjudication made on Appeal thereupon,
“ shall be quashed for want of Form, or be removed
“ by Certiorari or otherwise into any of His Majesty’s
“ superior Courts of Record; and no Warrant of
“ Commitment shall be held void by reason of any
“ Defect therein, provided it be therein alleged
“ that the Party has been convicted, and there-
“ be a *good and* valid Conviction to sustain the
“ same.

XXVI. “ And be it *further* enacted that this Act
“ shall be *and continue* in force until the First Day of
“ *January* in the Year One thousand eight hundred
“ and forty, and *from* thence, until the End of the
“ *then* next Session of Parliament,

XXVII. “ And be it *further* enacted, That this
“ Act may be altered, amended, or repealed by any
“ Act to be passed in the present Session of Parlia-
“ ment.”

[This is the usual clause depriving the Acts of the quarter sessions of the protection of an appeal. Surely a bench of magistrates is not always so constituted as to render it a tribunal above all others free from the necessity of appeal.]

[The matter of this clause is more properly inserted in the title.]

[This clause ought to be rendered unnecessary by a general rule, enabling the legislature to alter a law in the same session.]

THE SCHEDULE TO WHICH THIS ACT REFERS.

*Form of Indenture.**

" This Indenture, made the Day of
 " in the Year of the Reign of
 " our Sovereign Lord by the Grace of God,
 " of the United Kingdom of Great Britain and Ireland,
 " King, Defender of the Faith, and in the Year of our
 " Lord between A. B. and C. D.,
 " Churchwardens and Overseers of the Poor of the
 " Parish of in the County of
 " [or E. F. the Father or next Friend of the Boy to
 " be placed out, as the Case may be,] of the one Part,
 " and L. M. of Number in Street,
 " in the Parish of in the County of
 " Chimney-sweeper of the other Part, witnesseth,
 " that the said Churchwardens and Overseers of the
 " Poor, [or the said E. F. as the Case may be,] by and

* It has not been thought necessary to print this deed in a reduced form. It will be found, on a careful perusal, that all the words printed in italics may be struck out; and that then it will be still susceptible of reduction.

It is a well-grounded complaint that the deeds made by lawyers are verbose. Individuals dare not alter in the face of the practice of the court and of the legislature. If the legislature, acting for itself, would be at the pains to make all its own authorized deeds succinct, lawyers who desire not to aggravate fees by useless verbiage, would have good models to appeal to for the justification of their own peculiar practice. Take the present for an instance.

“ with the Consent and Approbation of G. H. and
 “ I. K. Two of His Majesty's Justices of the Peace,
 “ acting in and for the said County, Stewartry,
 “ Riding, City, Town, Borough, Division, or Place,
 “ [as the Case may be] signified as hereunder written
 “ put and bound by, and by these Pre-
 “ sents put and bind N. O. of the
 “ said Parish, Township, or Place, being of the Age
 “ of Years [as the Case may be], to be
 “ Apprentice to the said L. M. he having now
 “ other Apprentice or Apprentices,
 “ and no more [as the Case may be], to learn the
 “ Trade or Business of a Chimney-sweeper, and with
 “ him [or her] to dwell, remain and serve from the
 “ Day of the Date of these Presents, for and during
 “ the Term of Years, from hence next ensu-
 “ ing fully to be complete and ended, during all which
 “ Time he the said N. O. as such Apprentice his
 “ said Master [or Mistress] faithfully shall serve
 “ and obey, his or her* Secrets keep, and his [or her]
 “ lawful commands every where gladly do and per-
 “ form; he shall not haunt Ale-houses or Gaming-
 “ houses, or absent himself from the Service of
 “ his said Master [or Mistress] Day or Night with-
 “ out his [or her] Leave, but in all Things as a faith-
 “ ful Apprentice shall behave himself towards his said
 “ Master [or Mistress] and all his* [or her's] during
 “ the said Term: And the said L. M. in consideration
 “ of the Good-will which he [or she] hath and bear-

* What?

“ *eth*, towards the said Apprentice, and of the faithful Service so to be performed by him, doth hereby
“ *covenant, promise, and* agree with the said Churchwardens and Overseers of the Poor [*or the said*
“ *E. F. as the Case may be*], that he [*or she*] the
“ said *N. O.* his [*or her*] said Apprentice, in the
“ *Trade or Business* of a Chimney-sweeper, which
“ he [*or she*] now useth, *shall and* will teach *and*
“ *instruct, or cause to be taught and instructed* in the
“ best Manner that he [*or she*] can, and *shall and*
“ will provide and allow to the said Apprentice
“ during all the said Term, *competent and* sufficient
“ Meat, Drink, Washing, Lodging, Apparel, and
“ all other Things necessary for the said Apprentice; and that the said *L. M.* his *or her*
“ Executors, Administrators, or Assigns, *shall not*
“ *nor* will assign over this present Indenture,
“ or the Apprentice bound thereby, without the
“ Consent *and Approbation* in Writing of Two or
“ more such Justices of the Peace, to be signified according to the Form of the Approbation
“ hereunder written : And whereas, from the Nature of the Business *or Employment* of a Chimney-sweeper, it is necessary for the Boys employed
“ in climbing to have a dress particularly suited
“ to that purpose which Dress is only fit for that
“ Part of the Occupation, the said *L. M.* doth
“ hereby also *covenant, promise, and* agree to *and*
“ with the said Churchwardens and Overseers of
“ the Poor [*or the said E. F. as the Case may be*
“ to find *and allow* such suitable Dress for the said

“ Apprentice as often as *Need or Occasion* shall
“ *be and require, and provide for and deliver to the*
“ *said Apprentice* once in every year at least *during*
“ *the Term aforesaid, over and above the said Dress*
“ *proper for climbing, One whole and complete suit*
“ *of Clothing, with suitable Linen, Stockings, Cap,*
“ *or Hat, and Shoes; and further, that the said*
“ *L. M. shall and will* at least once in every Week
“ *cause the said Apprentice to be thoroughly washed*
“ *and cleansed from Soot and Dirt; and shall and*
“ *will require the said Apprentice* to attend the Pub-
“ *lic Worship of God on the Sabbath Day, and per-*
“ *mit and allow him to receive the Benefit of any*
“ *other religious or useful Instruction; and that*
“ *the said Apprentice shall not wear his Sweeping*
“ *Dress on that Day; and that the said L. M.*
“ *shall not nor will compel or oblige or permit the*
“ *said Apprentice to call the Streets; and further,*
“ *shall not nor will compel or oblige the said Appren-*
“ *tice to exercise his Business between the Hours*
“ *of Eight at Night and Four o’Clock in the*
“ *Morning from the First Day of November to*
“ *the last Day of March inclusive; nor shall the*
“ *said L. M. or any Person or Persons whomsoever*
“ *by his [or her] Directions, require or force him*
“ *the said Apprentice to climb or go up any Chim-*
“ *ney which shall be actually on fire, nor make*
“ *use of any violent or improper Means to force*
“ *him to climb or go up any Chimney, but shall in*
“ *all Things treat his [or her] said Apprentice with*
“ *Care and Humanity.*

Form of Approbation by Justices.

“ We G. H. and I. K. Two of His Majesty’s
“ Justices of the Peace acting in and for the
“ County, Stewartry, Riding, City, Town, Borough,
“ Division, or Place, [*as the Case may be,*] having
“ inspected and examined the within-named N. O.
“ [*the Boy to be placed out or assigned over*], and it
“ having been proved to our Satisfaction that he is
“ of the Age of Ten Years and upwards, do hereby
“ consent to *and approve of* his being bound [*or*
“ assigned over] as an Apprentice to the within-
“ named L. M. [*the Master or Mistress*] according
“ to the *Terms and Stipulations* expressed in the
“ within-written Indenture.”

The following is an attempt to embody in a simpler and more intelligible form, the contents of the foregoing law. The special modes of judicial proceeding are omitted, as they have no right to a place in any law, but one devoted to their express use. How much of labour, of inconsistency and reproach would be spared to our law-makers, if some regard were paid to this point alone. The compiler, though answerable for the omissions just re-

ferred to, is in no way answerable for the contents of this specimen of law-making. His object has been to put in a form, that would scarcely admit of doubt, what now constitutes the material of the law in hand.

The title is intended to shew how the barbarous Latin now in use might be beneficially superseded by the English language. Nothing serves so much to prove the servile adherence to the most senseless forms which distinguishes the jurisprudence of this country, as the retention of the present way of naming our laws. Now that all our laws are administered in the native tongue, surely we should cease to have recourse to dog Latin. Forms are of use,—the greatest use—where they realise the law without employing excessive terms. They preserve its uniformity and completeness, but their excellent uses make but stronger reasons why they should contain nothing obsolete, nothing merely formal, having no relation to the substance and not indispensable. The familiar phrase in the profession, “it is a mere form,” shews not only the greatest vice in our law as it is; but that it has so perverted the judgments of its professors, that they are incapable of furnishing the remedy. It is no more safe for a clear-headed lawyer to be for ever dealing with these forms, than it would be for an honest

man to associate with thieves, or a polite man with the vulgar : there must follow some deduction from his merits in spite of all his pains.

If the classification suggested in another part of this book were adopted, the chapter would of course fall under its proper head, and take its number accordingly.

If the general body of the Act were concisely and plainly written, the Analysis might be confined to the leading divisions ; but as long as our Acts of Parliament contain all and sundry matters, there is no help from confusion, except in a minute analysis, which might however, be in all cases printed with less prominence than in the present case, where the object is to force on attention, a novelty, on the adoption of which great stress is laid.

TRADES' REGULATION ACTS.

CHIMNEY SWEEPERS' REGULATION ACT.



CHAPTER 35.

Fourth and fifth years of William the Fourth.

An Act for the Better Regulation of Chimney Sweepers and their Apprentices, until the First Day of January, 1840, and thence until the end of the next Session of Parliament.—
Passed 25th of July, 1834.

ANALYSIS.

1. PREAMBLE.

1. Repeal of Existing Law.
2. Declaration that future Apprenticeships are to be according to Present Law.

2. PRELIMINARY CONDITIONS.

1. Lowest Age of Apprentice.
2. Children above that Age and under Fourteen.

3. Qualifications of Master.
4. How many Boys on Trial.
5. How many Apprentices.

3. TRIAL BEFORE APPRENTICESHIP.

1. No Apprenticeship without Trial.
2. Appearance before Justices.
3. Inquiries by Justices.
4. Register of Parties.
5. Period of Trial.
6. Boy to Work during Trial in all respects as a Chimney Sweeper.

4. PROCEEDINGS AT EXPIRATION OF TRIAL.

1. Inquiry as to the Willingness of Apprentices.
2. Inspection of the Indenture of Apprenticeships.
3. Age to be stated in Indenture.
4. Consent of Justices and how to be given.

5. PROCEEDINGS ON ASSIGNMENT OF APPRENTICE.

1. Inquiries as to New Master.
2. Consent of Justices and how to be given.

6. MISCELLANEOUS DIRECTIONS AND PROHIBITIONS.

1. Master to provide Leather Cap.
2. No Chimney Sweeper to let out his Apprentice to hire.
3. No Person to require Another to ascend a Flue in order to put out Fire.
4. No Chimney Sweeper to call or hawk in the Streets.
5. No Master to ill-treat his Apprentice, or violate his Covenants.

7. SCHEDULES.

1. Act wholly Repealed.
2. Penalties.
3. Forms
 1. Indenture of Apprenticeship.
 2. Justices' Consent.

PREAMBLE.

Whereas the existing law is insufficient for the protection of children of tender years, apprenticed to Chimney-sweepers, against the casualties incident to the cleansing of flues by climbing;

Be it therefore enacted by the King's most excellent Majesty, by and with the advice and

consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that the Chimney-sweeper's Regulation Act of the twenty-eighth year of King George the Third shall be repealed; and that henceforth the apprenticeship to Chimney-sweepers, of all children under the age of fourteen years, shall be subject to the following provisions :—

PRELIMINARY CONDITIONS.

1. No child under ten years of age shall be apprenticed to a Chimney-sweeper.

2. No child under fourteen years of age, who is not an apprentice under this Act, or at the time of its passing, shall be employed in chimney-sweeping, unless such child shall be on trial.

3. No Chimney-sweeper who is not a house-keeper in the place where he resides, and there rated to the Poors'-rates, or there assessed for taxes, shall take as an apprentice any child under fourteen years of age.

4. No Chimney-sweeper shall have more than two boys on trial at one time, nor more than four apprentices at one time.

TRIAL BEFORE APPRENTICESHIP.

1. No apprenticeship shall take place before the boy has had a trial of the business; and

before such trial shall take place, the following regulations shall be observed.

2. The intended apprentice, the master, and the parish officer, or the apprentice's parent, or any person standing in the place of his parent, shall appear before two Justices.

3. The Justices shall then make the following inquiries:—

1. Whether the intended apprentice be of the full age of ten years.

A copy of the entry in the register book of baptisms, kept at the place where such boy was baptised, shall be produced, attested by the officiating minister, and such copy shall be sufficient evidence of the boy's age.

The officiating minister shall give and attest the copy without requiring any fee.

Where no such entry can be found, the Justices shall, by any other means, inform themselves as fully as they can of the boy's age.

2. Whether the master is a housekeeper in the place where he resides, and there rated to the Poors'-rate, or there assessed for taxes.
3. Whether the master has more than one boy on trial.

3. Whether the master has more than three apprentices, or if four, whether the apprenticeship of one of them will have expired at the expiration of the period of trial of the proposed apprentice.

4. If the results of these inquiries shall be conformable to the foregoing conditions, the Justice's clerk shall register the name and residence of the intended master, and also the name, residence and age of such boy, and the names and residences of the parties accompanying such boy, and also the intended period of trial.

5. The trial shall not exceed two months, to be computed from the day of such registering.

6. During the period of trial the master may receive the boy into his out-house, and may permit him to ascend chimnies and work as a Chimney-sweeper.

PROCEEDINGS AT EXPIRATION OF TRIAL.

1. At the expiration of the trial the Justices shall ascertain from the boy whether he is willing to be a Chimney-sweeper and the apprentice of such proposed master ; and if he is not willing the Justices shall refuse to sanction the apprenticeship.

2. If the boy is willing to become a Chimney-sweeper and the apprentice of such master, and no further impediment shall appear to the Justices, they shall proceed to ascertain whether the indenture of apprenticeship contains all the particulars, and is in the form, required by this Act.

3. In such indenture the age of the apprentice, as proved before the trial, shall be mentioned; and such age shall, in relation to the continuance of the apprentice's service, be taken to be the true age, without further proof.

4. The Justices having ascertained the conformity of the indenture of apprenticeship with this Act, shall indorse thereon in writing, under their hands, their consent in the form required by this Act.

PROCEEDINGS ON ASSIGNMENT OF APPRENTICE.

1. On every assignment of an apprentice from one master or his representative to another master, the parties shall appear before two Justices, who shall in like manner, with reference to the new master, give or withhold their consent, after having made the foregoing inquiries as to his residence, prescribed qualifications, and the number of his apprentices.

2. Such consent shall be indorsed on the assignment, under the hands of the Justices, in the form required by this Act.

MISCELLANEOUS DIRECTIONS AND
PROHIBITIONS.

1. Every Chimney-sweeper shall provide for each apprentice, under fourteen years of age, a leathern cap, to be worn by him when out upon duty.

2. Such leathern cap shall have a brass plate fixed on the front, with the master's name engraved thereon, and also the name of the apprentice and the date of his indenture of apprenticeship.

3. No Chimney-sweeper shall let out to hire, by the day or otherwise, to any other person for the purpose of chimney-sweeping, any child already or hereafter apprenticed.

4. No person shall require any other person to ascend a flue for the purpose of extinguishing fire.

5. Every person who shall call or hawk the streets of any city, town or village, or elsewhere for employment as a Chimney-sweeper, shall forfeit for every such offence a sum not exceeding forty shillings.

6. Any master who shall ill-treat his apprentice, or fail to fulfil the conditions of the indenture of apprenticeship, shall forfeit for every such offence not more than £10 nor less than 40s.

The last provision shall not deprive the Justices of their ordinary jurisdiction over masters and apprentices.

SCHEDULE OF ACTS REPEALED.

Year of King's Reign.	SHORT TITLE.	Whether wholly or partially Repealed. Wholly.
28 Geo. III. c. 48.	Chimney Sweeper's Apprentices Regulation Act.	

SCHEDULE OF FORMS.

Indenture of Apprenticeship,
Justices' Consent.

It is unnecessary to repeat the Forms. With some Verbal Curtailments those already
given would be proper enough.

THE EXCISE SPIRITS' DUTIES ACT.

The following is a short but copious exposition of the vice of our present system of Law-making. It is two Acts in one. Accordingly, in the example of what it should be, it is so divided. It ought, indeed, to be three; for the 9th and 10th clauses, though they relate to the subject matter of the second part of this Act as given in the title, yet it is only as a general law includes every species. It relates to all licences, whether for the sale of beer or of spirits; and as regards the latter, whether for the sale of spirits in houses or on board ship. It would be more proper therefore to make the Acts three, that is—

1. The Spirits' Duty Act.
2. The Spirits Retailers' Licences Act.
3. The Excise Licences Act.

If the laws were classified, no inconvenience could follow such complete division, while it would offer great facilities for the repeal or amendment of every distinct part.

Next to the multiplicity of objects in the title the preamble deserves remark. A preamble of the sort is unnecessary, when the object is explicitly expressed in the title.

If it be necessary to make any provision at all for the recovery of arrears of duty, which

had accrued before the repeal of the old law, it should be provided for by a general rule. But notwithstanding the irrational rule that would construe strictly, which means with a prejudice on one side, laws relating to revenue, it would seem that in this case the additional words were wholly unnecessary, inasmuch as by this Act the duties and not the former Act are abolished, so that the Act still remains in force for the recovery of all arrears and penalties.

In the enactment of the new duties (2nd clause) are the words "raised, levied, collected, and paid." There is no law or rule of law which would forbid the raising, levying, and collecting this duty if these words were omitted, especially as the next clause declares, in very full language, that such duties shall be, in all respects, subject to the general body of Excise Law, which, among other things, regulates the proceedings relating to Excise duties generally. By the way, it may be observed, that this Act owes much of its simplicity to the existence of a general body of Excise Law, and the advantage that must follow, in other branches of the law, from a similar circumstance, is made more apparent in the specimens of this Act in its yet simpler form.

The 5th clause shows the convenience of giving some short title to our Acts for the sake of easy reference.

The 10th clause gives a specimen of the absurd use of the phrase "shall be good, valid, and effectual, any thing in any Act to the contrary notwithstanding." The law-makers seem to be ignorant that a positive expression more effectually excludes doubt.

The clause itself is a specimen of bad workmanship. It was intended to make a general rule, and that is precluded by a particular case. If the object had been merely to amend the omission recited, that would have been right; but it was absurd to employ the recital, in its present shape, to ground a general rule. Indeed the effect of such recital is to limit the construction to cases kindred to that recited—at all events a doubt is raised.

In the preceding clause the recital was proper, for existing provisions were to be superseded by others; and yet that clause is not without defect: another Act was passed in the same session to provide for the like emergency in other cases, arising out of the same cause. All might have been provided for at the same time and on the same principles.



ANNO QUARTO & QUINTO

GULIELMI IV. REGIS.

CAP. LXXV.

An Act to repeal the Duties on Spirits made in Ireland, and to impose other Duties in lieu thereof ; and to impose additional Duties on Licenses to Retailers of Spirits in the United Kingdom. [14th August, 1834.]

“ Whereas it is expedient to repeal the Duties payable in respect of Spirits made or distilled in or warehoused in Ireland, and to impose other Duties in lieu thereof, and to impose additional Duties on Licenses to be taken out by Retailers of Spirits in the United Kingdom. Be it therefore enacted by the King’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same That from and after the First Day of September One thousand eight hundred and thirty-four all the

PUBLIC REVENUE.

EXCISE.

SPIRITS' DUTY.



Fourth and Fifth Years of KING WILLIAM THE
FOURTH.

CHAPTER LXXV.

An Act to repeal the Duties on Spirits made in Ireland,
and to impose other duties in lieu thereof.

Be it enacted by the King's most Excellent Majesty
by and with the advice and consent of the Lords
Spiritual and Temporal and Commons in this present
Parliament assembled, and by the authority of the
same, That from the first day of September, 1834,
all the present Excise Duties on Spirits made in o
warehoused in Ireland shall cease.

“ Duties of Excise on Spirits made in or warehoused
“ in Ireland, shall cease and determine, and be no
“ longer paid or payable, save and except in all Cases
“ relating to the suing for, levying, and recovering of
“ any Arrear thereof, or any Fine, Penalty, or For-
“ feiture which shall have been incurred before the said
“ First Day of September One thousand eight hundred
“ and thirty-four.

II. “ And be it further enacted, That from and after
“ the said First Day of September One Thousand
“ eight hundred and thirty-four, in lieu of the said
“ Duties of Excise, so by this Act repealed, there
“ shall be raised, levied, and collected and paid the
“ Duties of Excise following; (that is to say.)

“ For and upon every Gallon of Spirits of the
“ Strength of Hydrometer Proof which shall
“ be made or distilled in Ireland, or which shall
“ be warehoused in Ireland, and taken out
“ for Consumption, the sum of Two Shillings
“ and Four-pence, and so in proportion for
“ any greater or lesser degree of Strength, or
“ any greater or less Quantity.

“ For and upon every Gallon of Spirits of such
“ strength as aforesaid which shall be made or
“ distilled in Ireland, and which shall be or shall
“ have been warehoused there free of Duty, and
“ which shall be taken out of Warehouse for
“ Removal into Scotland for Consumption :
“ the Sum of Three Shillings and Four-pence,
“ and so in proportion for any greater or less
“ Degree of Strength, or any greater or less
“ Quantity.

2. And be it enacted, That from that day in lieu of the present Excise Duties, there shall be paid the following Excise Duties :

For every Gallon of Spirits of the strength
of Hydrometer Proof, made or distilled
in Ireland, or warehoused there, and
taken out for Consumption - - 2s. 4d.

For every Gallon of Spirits of such
strength, made or distilled in Ireland,
and now or hereafter warehoused there
free of Duty, and which shall be taken
out of warehouse, for removal into
Scotland for Consumption - - 3s. 4d.

“ For *and upon* every Gallon of the like Spirits
“ *which shall be* taken out of warehouse,
“ for removal to *England* for Consumption
“ *the Sum of Seven Shillings and Sixpence,*
“ and so in proportion for any greater or less
“ degree of Strength, or any greater or less
“ Quantity.

III. “ And be it further enacted, That the said
“ Duties of Excise hereby imposed shall be respectively
“ raised, levied, collected, recovered, accounted for
“ and paid in such and the like Manner, and in and
“ by any or either of the general or special Ways,
“ Means, or Methods by which the former Duties of
“ Excise, hereby repealed, were or might have been
“ raised, levied, collected, recovered, accounted for, and
“ paid ; and every Pain, Penalty, Fine, and Forfeiture
“ for any Offence whatever committed against or in
“ breach of any Act or Acts on and immediately be-
“ fore the passing of this Act, and for securing the
“ Revenue of Excise or other Duties under the Ma-
“ nagement of the Commissioners of Excise respect-
“ ively, or for the Regulation or Improvement thereof,
“ and the several Clauses, Powers, and Directions
“ therein contained, shall and are hereby directed
“ and declared to extend to, and shall be respectively
“ applied, practised, and put in execution for and in
“ respect of the said Duties of Excise hereby charged
“ in as full and ample a Manner to all Intents and
“ Purposes as if all and every the said Acts, Clauses,
“ Provisions, Powers, Directions, Pains, Penalties,
“ and Forfeitures were particularly repeated and re-
“ enacted in this Act.

For every Gallon of the like Spirits taken
out of warehouse for removal to Eng-
land for Consumption - - 7s. 6d.

And in the same proportion in each case for any
greater or less degree of strength, or any greater or
less quantity.

3. And be it enacted, That these substituted duties
shall be subject in all respects to the Acts in force
affecting the duties hereby repealed.

IV. " And whereas, by reason of the Repeal of the
" Duties of Excise now payable on Spirits made *or*
" *distilled* in *Ireland*, and the Imposition of the other
" Duties of Excise in lieu thereof, the Duties on
" Spirits made *or distilled* in *or* warehoused in *Ireland*
" will be of a less Amount than the Duties of Excise
" payable in *Scotland*, on Spirits made *or* dis-
" tilled in *Scotland*, and it is therefore requisite to
" provide Regulations for the Removal of Spirits
" from *Scotland* into *Ireland*, and from *Ireland* into
" *Scotland*, be it *therefore* enacted, That from *and*
" *after* the said First Day of *September* One thousand
" eight hundred and thirty-four, *it shall be lawful to*
" *remove* any Spirits from any Warehouse *in which*
" *the same may be warehoused* in *Scotland* to any
" Warehouse approved of by the Commissioners of
" Excise in *Ireland* under the same Regulations and
" *in the same manner as may now be done by Law* ;
" and all such Spirits so removed and warehoused in
" *Ireland*, shall, when taken out of Warehouse for
" Consumption in *Ireland*, be charged with the *said*
" Duty of Two Shillings and Four-pence *per* Gallon.

V. " And be it *further* enacted, That *all* Spirits *shall*
" *be removed* from *Ireland* into *Scotland*, under the
" Rules, Regulations, Restrictions, and Provisions for
" Removing Spirits from *Scotland* or *Ireland* into
" *England* contained in an Act passed in the Sixth
" Year of the Reign of His late Majesty King
" George the Fourth, intituled an Act to repeal the
" Duties payable in respect of Spirits distilled in *Eng-*
" *land*, and of Licences for distilling, rectifying, or
" compounding such Spirits, and for the Sale of Spirits,

4. And whereas, in consequence of the substitution of duties hereby imposed, the Excise on Irish Spirits will be less than that on Scotch Spirits, wherefore it is requisite to provide regulations for the removal of Spirits from Scotland to Ireland, and from Ireland to Scotland, Be it enacted, That from the First Day of September, 1834, any Spirits may be removed under any regulations now or hereafter in force from any warehouse in Scotland to any warehouse in Ireland, approved of by the Excise Commissioners; and all such Spirits shall, when taken out of Warehouse for consumption in Ireland, be charged with the Duty of *2s. 4d.* per Gallon,—and that the removal of all Spirits from Ireland to Scotland shall be subject in all respects to the Spirits' Duties Act of the 6th year of the Reign of King George the Fourth.

“ and to impose other Duties in lieu thereof, and to
“ provide other Regulations for the Collection of the
“ said Duties, and for the Sale of Spirits, and for
“ the warehousing of such Spirits without payment of
“ Duty for Exportation, respect being had to the dif-
“ ferent Amount of Duty which shall be payable in
“ Scotland and all Enactments, Provisions, Restric-
“ tions, Rules, and Regulations in the said Act con-
“ tained regulating the Removal of Spirits from
“ Scotland or Ireland into England, together with all
“ Pains, Penalties, Fines, and Forfeitures relating
“ thereto, shall be in full Force and Effect, and
“ be applied and enforced with respect to the Re-
“ moval of Spirits from Ireland to Scotland, refer-
“ ence being had to the different Amount of Duty,
“ as fully and effectually as if the same were repeated
“ and re-enacted in this Act.”

VI. “ Provided always, and be it further enacted,
“ That nothing herein contained shall extend or be deemed
“ or construed to extend to require the Repayment of
“ any Malt Allowance on any Spirits distilled from
“ Malt only which may be removed from Scotland to
“ Ireland or from Ireland to Scotland.

VII. “ And be it further enacted, That there shall
“ be raised, levied, collected, and paid throughout the
“ United Kingdom the additional Rates and Duties
“ of Excise following ; (that is to say,)

“ Upon every Excise Licence to be taken out
“ after the Tenth Day of October One thousand
“ eight hundred and thirty-four by any Re-
“ tailer of Spirits in Great Britain and Ire-

Provided always that this Act shall not extend to require the repayment of any malt allowance on any spirits distilled from malt only, which may be removed from Scotland to Ireland, or from Ireland to Scotland.

SPIRITS RETAILERS' LICENSES ACT.

An Act to impose additional Duties on Licenses to Retailers of Spirits in the United Kingdom.—*Passed 14th August, 1834.*

1. Be it enacted by the King's most excellent Majesty, by and with the consent of the Lords spiritual and temporal in this present Parliament assembled, and by the Commons of the same, that there shall

- “ *land, if the Dwelling House in which such*
“ *Retailer shall reside or retail such Spirits*
“ *shall not, together with the Offices and*
“ *Premises therewith occupied, be rented or*
“ *valued at a Rent of Ten Pounds per Annum*
“ *or upwards, an additional Duty of One*
“ *Pound and One Shilling:*
- “ *If the same shall be rented or valued as afore-*
“ *said at Ten Pounds per Annum or upwards,*
“ *and under Twenty Pounds, Two Pounds and*
“ *Two Shillings:*
- “ *If at Twenty Pounds and under Twenty-five*
“ *Pounds, Three Pounds and Three Shillings:*
- “ *If at Twenty-five Pounds and under Thirty*
“ *Pounds. Three Pounds Thirteen Shillings*
“ *and Sixpence:*
- “ *If at Thirty Pounds and under Forty Pounds,*
“ *Four Pounds and Four Shillings:*
- “ *If at Forty Pounds and under Fifty Pounds,*
“ *Four Pounds Fourteen Shillings and Six-*
“ *pence:*
- “ *If at Fifty Pounds per Annum or upwards,*
“ *Five Pounds and Five Shillings.*
- “ *And all such additional Duties shall be raised,*
“ *levied, collected, recovered, accounted for,*
“ *and paid in the same manner, and under the*
“ *same Provisions, Enactments, Pains, Penalties,*
“ *and Forfeitures, as the Duties granted and*
“ *imposed by an Act passed in the Sixth Year*
“ *of the Reign of His Majesty King George the*

be paid, throughout the United Kingdom, the following additional Excise Duties upon every Excise License taken out after the 10th day of October, 1834, by any retailer of spirits, that is to say—

If the house in which he shall reside	£.	s.	d.
or retail such spirits shall not, together with the offices and premises therewith occupied, be rented or valued at a rent of £10 per annum or upwards, an additional duty of .	1	1	0
If rented or valued at £10 per annum or upwards, and under £20 .	2	2	0
If at £20 and under £25 .	3	3	0
If at £25 and under £30 .	3	13	6
If at £30 and under £40 .	4	4	0
If at £40 and under £50 .	4	14	6
If at £50 or upwards .	5	5	0

And all such additional duties shall, in all respects, be subject to the Excise Licences' Act of the sixth year of King George the Fourth.

" Fourth, intituled '*An Act to repeal several*
 " '*Duties payable on Excise Licences in Great*
 " '*Britain and Ireland, and to impose other*
 " '*Duties in lieu thereof, and to amend the Laws*
 " '*for granting Excise Licences,' are raised,*
 " levied, collected, recovered, accounted for,
 " and paid.

VIII. " Provided always, and be it further enacted,
 " That *nothing herein contained shall extend to impose*
 " any additional Duty on any Licence to retail Spirits to
 " be taken out by any Person in *Ireland* duly licensed
 " to trade in, vend, and sell Coffee, Tea, Cocoa,
 " Nuts, Chocolate, or Pepper, and not selling Spirits
 " to be consumed in the House or Premises of such
 " Retailer.

IX. " And whereas by the said *hereinbefore-men-*
 " *tioned Act of the Sixth Year of the Reign of His said*
 " *late Majesty* the Rates of Duty or on Excise Licences
 " taken out by Retailers of Beer, having the Autho-
 " rity of Justices of Peace to keep a Common Inn,
 " Alehouse, or Victualling House, and of Spirits, in
 " *Great Britain*, were fixed and ascertained by the
 " Rent or Value at which the House and Premises
 " occupied or used by such Retailers were rated
 " under the Authority of any Act or Acts of Parlia-
 " ment for granting Duties on inhabited Houses, and
 " by an Act passed in the present Session of Parlia-
 " ment the said Duties on inhabited Houses are
 " repealed, whereby it has become necessary to make
 " Provision for ascertaining the Rent or Value of
 " Houses and Premises in respect of which such

2. Provided always that this Act shall not impose any additional duty on any license to retail spirits to be taken out by any person in Ireland duly licensed to trade in, vend, and sell coffee, tea, cocoa nuts, chocolate, and pepper, and not selling spirits to be consumed in the house or premises of such retailer.

EXCISE LICENSES' ACT.

An Act to provide for valuing the premises in respect of which licenses are to be granted by the Excise commissioners, and to empower them to grant licenses by means of their authorized officers.

1. And whereas by the Excise Licences Act of the sixth year of King George the Fourth, the Rates of Duty on Excise Licenses taken out by retailers of Beer having the authority of Justices of the Peace to keep a common inn, ale-house, or victualling house, and by retailers of Spirits in Great Britain were ascertained by the rent or value at which the house and premises occupied or used by such retailers were rated under the Inhabited House Duties' Act, and that Act has been repealed in this present Session of Parliament. Be it enacted, That every such

“ exciseable Articles and Commodities to Passengers
“ on board of Passage Vessels from one Part to
“ another of the United Kingdom, and by an Omission in *the said Act* no Power is given to any Officer of Excise, or any other Persons than the Commissioners of Excise, to grant *the Licences thereby authorized to be granted*, whereby great Inconvenience and Delay is occasioned to Persons desirous of obtaining *such Licence; for Remedy whereof* be it further enacted, That all Licences to be granted under *the said Act*, or any other Act relating to the Revenue of Excise, may be granted by the Commissioners of Excise, or by any Officer or Officers of Excise who shall be authorized by the Commissioner of Excise to grant the same, and all Licences granted by any Officer or Officers so authorized shall be good, valid, and effectual; any thing in any Act contained to the contrary notwithstanding.

XI. “ And be it further enacted, That this Act may be altered, repealed, or varied by any Act or Acts to be passed in this present Session of Parliament.”

Illustration might be heaped upon illustration, and yet all the manifold anomalies of our present method not fully shown. Some of them will be indicated in the next chapter, containing the critical notices on the Acts of last session. It is, indeed, enough to indicate, for however the author may be inclined to travel this road, he will scarcely be able to induce

any other person than the Excise commissioners, Be it enacted, That all licenses to be granted under any Excise Act may be granted by the Excise commissioners, or by any Excise officer, who shall be authorised by them.

the general reader to go far along with him. But he cannot forbear adding a word or two on measures which are now before the legislature, in the hope that they who have too much to do, to turn back to the past, may find illustration in matters before them of the force and value of the author's efforts. His two subjects will be the Registration of Voters' Bill and the Marriage Bill.

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PART VI.

CRITICAL NOTICES ON PARTICULAR STATUTES.

1. FROM THE STATUTES OF 1834.
2. FROM THE STATUTES OF 1835.

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CRITICAL NOTICES ON PARTICULAR
STATUTES.

To propose to employ a minute criticism on an Act of Parliament may have a strange air; and yet, if its high uses and extensive operation be considered, nothing can be so worthy of criticism. Give me the making of a nation's ballads, and I care not who makes the laws, has been often quoted as a shrewd and wise saying; but its wit and wisdom came rather from the ridiculous idea suggested by the present state of our laws than from any true difference. Both the laws and the ballads of a people should have such consonance with its moral, that they may equally echo it and serve to re-act upon the popular sentiment. If there is any virtue in a Representative Government it rests here. The people and the legislature are one in interest and feeling, and the act of the one is the will of the other, expressed with more fitness than the common voice could have expressed it, but being expressed, so accordant with the genius of the

people, that all hearts acknowledge it as their own.

Criticism may be therefore most properly applied to bringing our laws as much into vogue as are our ballads. What principles should be employed will be collected from the whole of this work, which partakes of the desultoriness of its subject, for the most practised skill in generalisation would fail to deduce any principles uniformly adhered to either in the whole law or in its parts.

The first rule is that the laws should be written in the mother tongue, and the next that that tongue should not be used with the volubility of thoughtlessness. The law should be well conceived, well arranged, expressed briefly, and yet as clearly as possible; it should be single in purpose and harmonise with the general tone of the law of which it forms a part.

The following notes on many of the Acts of the session of 1834, and one or two of the present session, do not profess to point out, in detail, the application of these principles to each Act. They are confined to some brief notices of the peculiar defects of each, with a view to lead others to a more practical observation of the particular nature and form of our laws. For however much we may admire a compre-

hensive genius, it will fail to gain any permanent esteem in the world, if its influence be not felt in the minutest details. It would be of little consequence that the most skilful architect should plan a structure the most magnificent, if the blundering bricklayer put the timbers awry and laid the bricks in a zig-zag manner. Nor must the architect wonder if the world abuse him for the blunders of his workmen, since it belongs to his part, not only to make the plan, but to take care that it be properly executed. If our legislators would bear in mind this little truth, Acts of Parliament would not be in such ill odour with every class of persons.

STATUTES OF SESSION OF 1834.

THE CROWN AND ROYAL FAMILY.—There were no Acts passed on this class of subjects during the last session.

THE LEGISLATURE.—*Registration of Voters; Warwick Witnesses' Indemnity; Liverpool Witnesses' Indemnity; House of Commons' Offices; Registration of Voters (Scotland)*

The Registration of Voters' Act.—The preamble recites a good deal which is not to the

purpose. Its second clause was unnecessary; and there was little or no occasion for the third. Subject to these reductions, and some little verbiage in the middle of it, the Act has the merit of unity of object, and is plain and short.

The *Warwick and Liverpool Witnesses' Indemnity Acts* ought to have been made unnecessary by a general law, including all such cases. It is very unseemly to be making a law for the nonce. Besides, the progress of proceedings is inconveniently suspended, while this preliminary matter is in the course of adjustment. The subject-evil is in the course of remedy; but the remark is of general application. These Acts are good instances of copious verbiage.

The *House of Commons' Offices Act* is an instance of the want of connexion between one Act and the rest relating to the same subject matter, and the necessity for consolidating the law, as each subject comes under the notice of the legislature.

PUBLIC SERVICE (CIVIL OFFICES); *Exchequer Offices' Regulation: Clerk of the Pipe; (Scotland) Pensions (Civil Offices); Pensions (Civil Offices Act.) Indemnity.*

The *Exchequer Offices' Act* is good in many respects. The verbiage is not very excessive.

But it includes divers objects. The compensation should have been provided for by a separate Act; and all that related to the past got rid of. The Act would then have been confined to the constitution of the new office, and its appropriate regulations. The same blunder is committed here as in other cases—the existing law which it was intended to retain, has not been consolidated. There is too, one of those provisions which serve to mar the uniformity of the general law—a clause for punishing persons guilty of forgery, in connexion with the documents of this department. This should have been a part of the general law on the same subject. It would have been as reasonable to have introduced into the Act all the other punishments that attach to the offences against its peculiar provisions. They are properly left to the general law. On the whole it may be said that the Act is good as compared with other Acts; but it is impossible to say what are its defects when compared with the rest of the law relating to its subject. At all events, one opportunity of making progress towards a general consolidation of the law has been lost.

The Act for the abolition of the office of the Clerk of Pipe in the Scotch Court of Exche-

quer needs no observation, except that it is a little wordy. Its object is single.

The *Pensions Civil Offices' Act* is a good Act in object, but it is another case of neglect to consolidate, which is inexcusable, where, as in this instance, the Act constitutes an entire fabric of regulations, concerning one large subject, or division of a subject. In all such cases the whole law should be contained in one enactment.

The next is an amendment of the last Act to exempt the Metropolitan Police Magistrates who had been appointed previously to the passing of the former Act, from its operation. The only oddity is in the preamble, which, after citing the former Act goes on to say "And whereas it is expedient that the said Act be altered and amended so far as relates to such magistrates." If expedient there is a reason. It is in the nature of an expediency to be founded on a reason, and that usually a peculiar one, resulting from peculiar circumstances. This, therefore, should be shewn, especially where the exemption is from a general rule. It is a mockery of rationality to make a shew of reason without giving it; and better to omit the expression where the presumption is in favour of one, if nothing be said about it. The goodly maxim is, "*Lex summa ratio est.*"

The *Annual Indemnity Act* abounds in verbiages and ample phrasing. This is remarkable as an official production; and as an annual passing of a law to mitigate the effects of other laws so absurd or so futile and oppressive that the authorities do not think it wise to enforce their provisions. The law is passed annually, *sub silentio* without notice or remonstrance.

The most remarkable characteristic of the law is the strange conjunction of the affairs of attornies' clerks with those of the public functionaries. They should at least be made the subject of separate laws. But there is another in the conclusion of the preamble, reciting that such and such things have been done—through ignorance of the law—an indemnity against the effects of ignorance! why should not the same principle be extended to all who cannot find out the meaning of an Act of Parliament on account of its verbosity. The principle of this law is a bad one. If there be such inconvenience, and the benefit do not correspond, why not repeal the law? There should be no indemnity—the individual offending should be punished that the rest of the people may, in turn, have his sympathy when they become affected by bad legislation.

THE ARMY.—*Mutiny; The Militia; Militia Pay; Militia Ballot Suspension.*

These are annual official Acts. They are not free from the defects common to other Acts of Parliament. It is curious that the Mutiny Act is published, as elsewhere said, by authority, with a very convenient analysis. The inspection of that analysis shews many defects of arrangement; and a want of compactness which is the result. Were the same analysis published for the use of members, with the Bill, while in its progress through Parliament, these defects would soon become apparent.

The *Mutiny Act* is by far too narrow a title. It relates to the entire government of the Army. It is in short its civil law. There are, for instance, regulations as to billeting the soldiers, and other matters that do not come within its cognomen.

This should be said of all bills of the sort, that being subject to an annual revision they ought to be perfect of their kind.

THE NAVY;—*Marine Mutiny; Navy Pay; Greenwich Hospital Annuity; Merchant Seaman's Relief.*

The *Marine Mutiny Act* is an Annual Act, and the remarks made on the last class apply to it. The *Merchants' Seaman's Relief Act* is

well drawn up according to the official and accustomed manner, and on that account, a good example of the defects of the system. A poor sailor would find it a puzzling matter to understand his rights under this law.

The *Greenwich Hospital Annuity Act* is an example of the advantage of a schedule of Acts repealed. The third clause, directing the manner of proceeding by the Treasury and Exchequer, ought to form part of a general law. The routine of business should be varied as little as possible by special directions. It is due to the officers employed, too, that they shall not have to seek them in a multitude of laws. There is scarcely an Act in which the Treasury is concerned, that does not require certain things to be done, sometimes by two, sometimes by three, more commonly the latter—sometimes by warrant—sometimes by minute—sometimes by order. This specialty should only be employed in special cases. The manner of proceeding should be determined by a general rule, settled by law; and the law in its other directions should have reference to such general rule. The business of the Treasury is now so well understood that it would not be difficult; and much of fiddle-faddle work would be got rid of. This is a fit sequel to the law respecting the Exchequer, and ought in-

deed to form a part of that law ; at least so far as regards the relation between the Treasury and the Exchequer, which of course concerns the issuing of public money. The relation between the Treasury and the other offices, which concerns the superintendence of the latter, through the expenditure of such offices, ought to be made the subject of another general law. There would then be scarcely an Act that would not be relieved of some one or more wordy clauses.

THE WAYS AND MEANS ;—*Transfer of Aids ; Exchequer Bills ;—Sugar Duties ; Pension Duties ; Consolidated Fund ; Exchequer Bills ; Appropriation Act.*

All these Acts are nearly counterparts of Acts to the same purposes, passed every year. The merits and the faults belong alike to all,—the *Appropriation Act* claims the larger share. It has been already noticed.

THE DEBT ;—*Four per Cent Annuities ; Bank of England Debt.*

This last Act is simple, being confined to one object. Of the former one a specimen has been already given. The entire act is of the same description.

THE EXCISE ;—*Excise Revenue Management ; Spirit Duties ; Starch Duties repeal.*

All these Acts are disgraceful to English

legislation. The first, on the above list, should have formed five Acts instead of one. It accomplishes, at least, that number of substantial objects. This is an instance of the mode of confusing our laws, which results from the present system of Legislation. A few years ago the whole of the Acts relating to the collection and management of the excise revenue were embodied in one law. In a subject so multifarious as the excise revenue, where the skill of the trader is constantly employed, either to evade the law, or to introduce new processes, there must be a corresponding necessity for the application of new modes of carrying the law into effect. The excise law, therefore, forms a constant subject of legislation. But on this very account, it is especially necessary, that the method of appending or substituting new provisions should be simple, and conducive to simplicity. Every addition should stand alone; at least additions to different parts of the same body of law, having no analogy in principle, and wholly unconnected in practice, should not be clubbed together. The Act should be so framed, that any person having the main body of the law, might tack the addition or substitute to that part of it to which it referred.

The Excise Act before us also consists of a

vast quantity of dead matter. Instead of simply repealing clause No. 1. or 2., or 5, as the case might be, of the former Act, the whole of the clause is verbatim included in this Act with a view to put to the end of it, that it shall be repealed. This magnifies the appearance of the Act and the distaste to its perusal.

The *Spirits Duties' Act* is another instance of doubling the subjects of an Act. In this case there was less excuse. In the preceding one the whole of the matters included in the Act more or less concerned the management of the Excise; but here are two sets of duties dealt with bearing no relation to each other; and affecting a different class of persons; or, if the same, in a different way.

The *Starch Duties' Repeal Act* is very remarkable in its way. This law is crowded with temporary matter, and with one little clause of permanent matter, which is very important. The Act is designed to repeal the duties on starch, stone bottles, sweets or made wines, mead or metheglin, and on scale-board made from wood, four different sets of things; but of that say nothing. The greater part of the Act is filled with precautionary measures, for regulating the making of starch, in the pe-

riod that should elapse between the passing of the law and the cessation of the duty. But at the end of the Act is a declaration that the licenses on the retailers of sweet wines shall be continued, with a second declaration as to the persons who shall be regarded as retailers, and this single clause is all that is of a permanent nature in the Act: so that, after the Act has done its office of repealing the existing duty, it must be retained for the sake of this little clause. This Act illustrates the necessity of distinguishing, not only between temporary and permanent Acts so called, but those Acts, whose office is accomplished after a little while. An inattention to this point has been among the causes of the bulky condition of our statute book. Acts of Repeal ought surely to be distinguished from Acts of General Law.

THE CUSTOMS.—*Customs' Amendment Act; Smuggling Act Amendment.*

The *Customs' Amendment Act* and the *Smuggling Act* are both Customs Laws. Two or three years ago these Acts were consolidated, and the above are amendments. In their structure and language these Acts are among the best that we can boast of. Still they admit of improvement, and the remark made upon the

Excise Laws, as to the injudiciousness of clubbing together all amendments of all parts of a good consolidated law, apply, though with less force, to these Acts.

The *Smuggling Act Amendment* is a fair example;—for it so happens that in the Customs' Amendment Act, and in this Act, the same subject matter is amended. The latter is intended to deprive the magistrates of the power of sending into the navy persons convicted of smuggling; and one of the provisions of the Customs' Amendment Act provides for the cost of the proceedings directed in the Smuggling Act. But both of these Acts, and especially the latter, contain matters not pertinent to the main object. For instance, the chief part of the title of the Act runs thus, "An Act to repeal so much of an Act of the last session of Parliament for the prevention of Smuggling," as authorises magistrates to sentence persons convicted of certain offences to serve His Majesty in his naval service"—and then goes on—"and to alter and amend the said Act." Under cover of the last words many most important changes are made, not in the Smuggling Preventive Act, but in all the Customs laws. It is true that they apply to the Smuggling Preventive Act as well. Thus Justices are empowered, where they have no gaol in their own district, to commit to a neighbour-

ing one—to substitute imprisonment for penalty, and for what period—to commute sentence of hard labour, where the offender is a female, or is incapable of hard labour from age or sickness, and so on. Now these are all good provisions, but they do not relate to the matter expressed in the main body of the title, and equally concern all Customs' laws. They ought to be contained in an Act, regulating the procedure of prosecutions and the punishment of offences against the Customs' law. But there appears to be no reason why the provisions just quoted should not be the rules in all Criminal Cases coming under the cognizance of Justices. At all events, the whole of this sort of procedure as regards the matters of revenue ought to be put together, that the legislature may see of what it consists. There is too much reason to believe it is very oppressive in many cases.

THE STAMPS AND TAXES;—*Land Tax Amendment ; House Tax Repeal Act ; Assessed Taxes Relief Act ; Assessed Taxes Composition ; Stamp Duties' Relief.*

The first of these Acts is manifold. Its very title announces two objects essentially distinct, and the body of the Act gives three. The title is, "To amend the laws relating to the land and assessed taxes, and to consolidate

the Boards of Stamps and Taxes. In the body of the Act is a third matter, the enabling distributors of Stamps to be receivers of Taxes. The wording of the Act answers to the confused arrangement. It exhibits the converse of the art of saying no more than enough.

The *House Tax Repeal Act* is short, and very little away from the purpose. There is here, however, an important omission. Many things, according to law, are made to depend on the value of the house, which an individual may inhabit; but by the repeal of this tax there would be no way of ascertaining that value if the method now adopted were not retained. It is therefore retained in this Act; but instead of being set forth here, reference is made to another Act, that of the forty-eighth year of George the Third. A regulation affecting such important matters should have been whole; and the more so, as in the course of the changes that take place, in Tax affairs, that Act may be repealed. The more workmanlike way would have been to recount the principle and method in a separate Act, so that its existence might not depend on the chances of the repeal of laws, of which it now forms a part—one half of its body being with one, and the other with another. The force of this observation is confirmed by the fact, that in the

Excise Spirits' Act of the same session it is found necessary to make a special provision to suit the occasion. There are probably many other cases of the same kind which should be met by a general principle embodied in a single law, unshackled by the peculiarities of circumstance, as in the Excise Act just mentioned.

POST OFFICE;—*North American Postage; Newspaper Postage, (Colonies).*

In the first of the above Acts an important principle is carried further, *viz.* the right of the Colonies to tax themselves. The object of the Act is to enable the North American Colonies to fix the rates of Postage, and to apply the surplus after defraying the expenses of collection and management to colonial purposes. The Act is too short to admit of many defects, yet the title very happily fails to express the scope of the law.

The other Act is wrongly entitled. The Title runs thus, "An Act to regulate the conveyance of Printed Newspapers by Post between the United Kingdom, the British Colonies, and foreign parts;" and its very first clause abolishes the privileges then enjoyed by the Clerks in some of the public offices of franking, not only newspapers, but votes and proceedings in parliament. This clause ought, without doubt, to have formed a separate Act,

and then all would have been well so far. The remainder of the Act is remarkable for a superabundant care. In one clause (the 10th.) there are twenty-four lines together quite unnecessary. The whole clause does not exceed forty-two lines.

The 14th clause should be the general principle, viz. that all the monies raised and received by a public officer for public taxes, should be paid into the Exchequer, and form part of the Consolidated Fund.

THE LAND REVENUES ;—*Dean Forest Boundaries ; Menai and Conway Bridges.*

These are elaborate specimens of over-much doing. In the first there is little opportunity but the most is made of it. The second is a piece of wordiness of great merit in its way. It begins with a preamble, nearly three pages long, which might have been brought within half a page, for all the purpose that is required, and then in one short clause completes the promise of its title. After that it proceeds to take some very strong measures—making local turnpike trusts liable to pay certain large sums alleged to be due from them, and certain other large sums to be expended—and continuing on the public certain impositions in order to meet their liabilities. Of such important purposes, the representatives and the public of the respective districts affected by

the measure should have had full notice in its title. This omission is the more inexcusable as the matters not mentioned in the title occupy ten out of thirteen pages of the Act.

LOCAL GOVERNMENT ;—(*The Counties*); *Expenditure of County Rates*; *Uniform Valuation Act (Ireland)*.

The first of these is an extraordinary Act. The title does not express its purport. The preamble is deceitful. The style is wordy; and one clause is so artfully contrived, that it is difficult to escape the conclusion, the opposite to that to which it aims; and all this happens in an Act that does not reach four clauses, or a single page.

The title calls it "An Act to regulate the expenditure of County Rates and Funds in aid thereof." This is quite wrong—it should have been, "An Act to declare all proceedings at sessions any wise connected with the County Rates and Funds in aid thereof, void, if not transacted in public.

The preamble then states that doubts have arisen whether, under the powers and directions of the statutes respecting the County Rate it is requisite that the business relating to it should be transacted in open court, which is not the on, though like it. The fact being that was no doubt whether the statutes re-

quired publicity, but it was a new principle as to this matter, which it was thought desirable to bring into practice.

And then the Act concludes with : “ And be it enacted that this Act shall extend and apply “ only to Justices of the Peace of the several “ counties at large in England and Wales, and “ of the several counties of cities and counties of “ towns within the same.” The specification destroys the wholeness of the clause, and its intended impression. It means that the Act shall apply only to the Justices of Peace in England and Wales, and not to the Justices of the Peace in Scotland and Ireland ; whereas the conclusion is, that it applies only to certain Justices of the Peace in England and Wales, excluding others ; that is to say, the Justices of the Peace of the several counties at large, and not the counties in general ; and of the several counties of cities and counties of towns, within the same ; and not to other Justices of any other jurisdiction, of which there are none. No wonder there are doubts when the mind is forced on the verbalisms instead of the tenor of the law.

The *Uniform Valuation Act* is another instance of dissimilar objects being conjoined in the same Act. The main object here is to amend two former Acts, passed for the Uniform

Valuation of lands and tenements in the several baronies, parishes, and other divisions of counties in Ireland, the title recites all this in eight lines, and then concludes, "And to provide for the more effectual levy of Grand Jury cess, which last purpose is accomplished by the 15th and last clause of the Act.—A clause, which, by the way, suggests the expediency of having one law of distress, for the recovery of penalties, of public taxes, and of rent. The same modes being applicable to each of these cases, with only that difference which results from the different destinations of the funds produced by the distress. But this can have nothing to do with the procedure. All that is necessary to be provided is, that before such extreme measures be taken, notice shall be given,—that when it has been taken, opportunity shall be given to replevy or redeem; and that a sale, with all proper publicity and notice shall take place only on failure of all the preceding methods. The overplus, after deducting the sum to be levied, with a certain fee for the officer who makes the levy, should be paid over to the party on whom the distress was levied. It is sufficiently ridiculous to employ a different method for each occasion, and it can scarcely be expected that people of ordinary talents should acquire the skill to

used in following out in practice without blundering the complicated niceties of an Act of Parliament. But however this may be, the subject matter of this clause ought to have formed a separate enactment, as it bore no relation to the main subject of the Act.

The law (see the fifth clause) also exemplifies the necessity of striking out of the old law so much as is repealed. This should be formally done at the close of each session, by some competent officer.

LOCAL GOVERNMENT; (*Towns*), *Burghs*, (*Scotland*); *Royal Burghs*, (*Scotland*.)

Both these Acts go to the same point, and they are in terms nearly the same. They are intended to clear up a doubt as to the order of going out of the persons elected to the burgh magistracy, in pursuance of an Act of the former session, which required an entirely new election of Town Councils for Scotch burghs, and that afterwards one-third of them should go out every year. These Acts shew how much of confusion may be saved by saying no more than enough. The preamble might have been reduced with great advantage. As it is the nature of the doubt to be remedied by the Act is scarcely made apparent.

These are instances of temporary laws, which

having served their purpose, should be discarded from the statute book.

LOCAL TRUSTS AND COMMISSIONS;—*Turnpike Acts' continuing ; Irish Roads Acts' Amendment.*

The first of these Acts ought to come under the cognizance of the Public Works Commissioners. The other is nominally one of the same class of Acts ; but in truth, it ought to be a part of general local police. The object is to prevent the damage that may arise to the roads from the straying of cattle : but no poor fellow would look for the right to seize, impound, and sell his beasts under an Act so entitled.

PUBLIC PEACE ; *Disturbances Suppression (Ireland) ; Arms (Ireland).*

Acts of this nature must be founded on their special circumstances. But being at variance with the main nature of the constitution, they should be always temporary, that they may not outlive the occasion which gave rise to them.

It deserves consideration, whether all laws should not be temporary. This principle is adopted in America, and in consequence the entire scheme of jurisprudence comes under investigation at regular intervals. It would give opportunity for consolidating on the gene-

ral fabric all the casual improvements. Each year might have its peculiar branch of duty, to prevent the entire mass from crowding on the attention of the legislature at once. Sir W. Blackstone warmly recommends this plan.

RELIGION;—*Roman Catholic Marriages (Scotland)*; *Ministers of Church, (Scotland)*; *Church Temporalities (Ireland)*.

The *Roman Catholic Marriages' Act* is a specimen of legal fear. Its substantial enactment is, that the recited Acts so far as they prohibit the celebration of marriages in Scotland by Roman Catholic priests or other ministers not belonging to the established church of Scotland, shall be repealed, and then that after proclamation of banns they may celebrate such marriages, of course adding, "without being subject to any punishment, pains, or penalty whatever any thing in the recited Acts or in any other Act of Parliament to the contrary notwithstanding." This last phrase is a satire on the state of the law, which makes it necessary, by a sort of blind hazard, to repeal whatever may concern the matter. Indexes would help to cure this, but at all events, the legislators should neither make nor unmake laws, not knowing them specifically, and the special reasons on which they are founded.

This little Act, lengthened as aforesaid, is further extended by two more provisions, one, "And be it enacted, that the said recited Acts shall, except in so far as the same have already been, or are hereby repealed or altered remain in full force, authority, and effect." There had been nothing in the former part of the Act that rendered such a clause necessary—the very thing provided for existed. A statute is repealed only so far as it is repealed. The other unnecessary provision is a declaration that the Act might be amended or varied by any Act or Acts to be passed in that present session of parliament. This declaration ought to be made unnecessary by the establishment of a rule to that effect. It is now appended to one-third of the Acts of the session, though it may be used only in a single case. Out of ninety-six Acts of last session there was but one amendment of the sort.

The Irish Church Temporalities' Amendment Act is a splendid specimen of Irish eloquence in the legal way. It is without doubt the worst specimens of conglomeration and wordiness. If Irish legislation is to find more favour in the House, the Acts must be made more readable. The most conscientious and pains-taking might be spared the severe punishment of perusing such a document as this.

“Archbishops, Bishops, or other ecclesiastical persons;” “the Lord-Lieutenant or other chief governor of Ireland;” “Archbishopric, Bishopric, Deanry, Archdeaconry, Dignity, Prebendary, or Canonry,” and classes of words of the same sort, occur several times in a clause, to the utter discomfiture and disgrace of those grammatical contrivances, the relative and personal pronouns. Like the ornaments of a lady’s dress, these groups of words are interspersed with most beautiful orderly confusion, dazzling the sight by their luxuriance.

Sheridan once quoted a quantity of Greek sounding words, as of the veritable Greek tongue, and the House resounded with applause. This Act delivered *ore rotundo* might in the same way serve for a forgotten speech. Its rhetoric is quite Demosthenian. The roundness of the periods, the sonorousness and energy of the language would not disgrace the most accomplished master of his art.

PUBLIC MORALS;—*Glasgow Lottery*.

This is an instance of the want of some control in passing our laws. Had there been a careful investigation of the machinery of it, it could never have passed. This is by no means a singular instance of a law being passed in some respects opposed to the policy of the legislature, and of the general law. This case

and such cases should be met by general resolutions of the House. In the case of money grants it is necessary that a specific resolution of the House should be passed, and the consent of the crown obtained. Whenever the legislature has arrived at a point where it may do so, it should establish a general rule of policy, so that the character of the law might be uniform. The rule might be abrogated if it were afterwards thought to be impolitic; but in the meanwhile, it would act as a check. This is the advantage that has been, from time to time, attempted to be secured by irrevocable laws, which is a very absurd proceeding, as a past legislature cannot disinherit future legislatures; but it is yet necessary, where a law is of principal importance, to mark that and to give future legislatures a caution against a too ready abrogation of it, on slight grounds.

ADMINISTRATION OF JUSTICE; — *Juries (Ireland); Administration of Justice in Boroughs; The Bodies of Criminals; Capital Punishments; Central Criminal Court; Stannaries' Court (Cornwall); Justices of the Peace (Scilly Island); Spring Quarter Sessions; Lancaster Court of Common Pleas; Norfolk (Island); Court of Chancery (Ireland); Court of Equity Service of Process; Appeals against Convictions (Ireland).*

This is the fruitful field of legislation, and deserves more lengthened and severe comment than can well be afforded here. Some of these Acts go to the body of judicial reform; some to mere accessaries; but the latter are types of a thousand other anomalies that disgrace our scheme of judicature. We have now to do with the qualities of these acts: the foregoing eleven Acts form nearly an eighth of the legislative products of a single session, and they will bear the same proportion till our judicial system be made a consistent whole.

The first is an Amendment of the *Irish Juries' Act* of the preceding session, which was remarkable for its long coming after the *English Juries' Act*,—that is, after an interval of eight years. This Act is brief, yet wordy.

The *Central Criminal Court Act* has already engaged a good deal of attention. It might have been supposed, from the struggle for the credit of its authorship, that it was a most meritorious production. Its principle is doubtless good; but its very goodness pleads for extension. The rest of the empire may fairly claim the privilege which it confers on the metropolitan counties. But the details of this measure are bad, and its style is very diffuse. In the hands of a comprehensive law reformer this Act might make a good text of the existing abominations of our system.

The *Bodies of Criminals' Act* offers no remark, except that in its recital it declares it expedient that the Act should be amended, when, in fact, what is proposed is more than an amendment. It is a change of principles, and changes the substantial subject matter. This is not a nice distinction. An amendment is applicable only to the carrying further a principle or scheme already declared, supplying some defect, or providing a better means.

The above Act for abolishing *Capital Punishments* gives a curious case of blundering, arising probably from the profusion of language. Four or five lines are repeated. A further reduction of fifteen or sixteen lines might be made out of this single clausèd Act which only contains forty-two.

The *Court of Chancery, (Ireland) Act* is another case of piecemeal legislation. This year a wee bit for England; the next a wee bit for Ireland. This Act is made for the purpose of reforming the Court of Chancery, in Ireland. It mingles too many and diverse objects. It wants both unity and wholeness. It should have been at least three, perhaps four. The power given to the Chancellor to make orders ought to be more general, yet always subject to Parliamentary controul. Half of the Act is made up of compensation clauses, which should

have formed a separate enactment, as in a little while it will be all dead matter. Besides the title gives no notice of the money nature of the measure. The rest of the Act is as verbose as may be. A judge who should give his judgment as this Act is written would not be understood even by the lawyers.

The *Lancaster Court of Common Pleas' Act* is intended to assimilate the practice of that court to that of the superior courts of Westminster. The chief objection to it is that matters, which should be regarded as of mere regulation, are made a substantial part of the Act. Upon the whole it is well written, though capable of some abbreviations which would add to, rather than take away from, the force. The 16th clause, which gives a power to state a special case without going to a jury is a good one. The 24th is as curious. It establishes fees just when they are being abolished in other directions, and in favour of a judge who may be selected by the crown. It is difficult to conceive why this Court at Lancaster should not be abolished, and merged in the superior Courts. As a Palatinate (an *Imperium in Imperio*) it ought to be destroyed. The king in this view is a subject. He ought to hold no right inconsistent with the general right of the subject. But it is said that the court is cheaper

and more convenient to the inhabitants of that part of the county. This is a two-edged reason. Why should not the superior courts be made cheap like unto it? and again, Why should not other districts also have their convenient local court?

The names of the writs or processes employed by the court are preserved in all their deformity "*Venire facias Juratores*" and a "*Habeas corpus juratorum*" and an "*Exigent.*"

Upon the whole, comparing it with other acts of the sort, this may be said to be a good one. It has, however, some oddity arising out of the mutual help the courts are to render to each other. But herein consists its beauty. It prepares the way for merging the Lancaster Court in the superior courts, or of much improving the latter as a local court.

There is no provision for a return of its proceedings that a notion may be formed of its working.

The *Equity Process Act* is a tardy attempt to cure a long-standing grievance: the enabling parties to serve with the process of the court persons who are out of the realm. This Act is most disgracefully written. The first clause ought to have been divided three or four parts in order to make

telligible. The title is bad. It is called an Act to amend and extend the Act of last year, without saying in what respect. *110?*

Costs in actions on *Quare Impedit*. The writ of *quare impedit* is a proceeding in which the court had not before jurisdiction in the matter of costs. The object of this Act is to cure the defect in this particular. But the whole principle and practice of costs requires to be adjusted. It is now in a most oppressive anomalous state. This is no small point. There is an old story of many thousands being spent on a subject not worth a farthing. Now as this may happen from no fault on the side of one party, it is a great oppression not to relieve him of costs. They operate now as penalties, and with scarcely less severity, and, in almost all cases, form part of the damages sustained. It is bad to be obliged to go to law; but worse to be at the whole cost of the revenge.

This Act exempts bishops from costs where they had probable cause for refusing to present, even when the plaintiff shall establish his case. If he be poor, does not the latter need most protection? and ought not the bishop to be restrained by the fear of consequences? The power of certifying is very capriciously exercised by the judges; and the practice of one judge is discountenanced

by another. The juries, ought in all cases to give their verdicts as to costs, as they do as to damages. The question so repeatedly put by them as to the effect of their verdict as to costs, shews the necessity for investing them with that power.

With the exception of the *Stannaries' Court*, (*Cornwall*), the rest of the Acts in this division relate to the jurisdiction of the justice of the peace. It will probably be found that the justice of the peace system has called for the larger part of our legislation. This shews its importance, and the necessity for an uniform judicature. It would be worth while to enquire what is the cost of the sessions, and whether additional assizes might not be held until the local courts are established.

The state of our sessions and our assizes is equally anomalous and barbarous. What has been done for the metropolis ought to be done for all the counties of England. As it is neither the sessions nor the assizes provide meat and drink for the barristers who frequent them. The sessions should be held at least every two months, or oftener; and the judicial function should be separated from the ministerial. The whole system is a constitutional excrescence.

The last four lines might be struck out from the preamble of the *Spring Quarter Sessions' Act* without loss. So may the last nine of the Act. The conclusion is very absurd. The body of the Act has provided that a particular course shall be taken on a particular event, and only then—the unavoidable inference is that every thing else remains in its former state. But not so; an abundance of words is employed to make that clear which needed no illustration.

The *Stannaries' Court Act* exemplifies the confused character of our legislation. Affidavits could, before the passing of that law, be made only before the vice-warden of that court, which occasioned inconvenience to persons residing at a distance. The object of this Act is to enable parties to be sworn before certain officers of the superior courts. This difficulty should have suggested the enquiry whether other persons were not similarly situated. Next year it may be found that some other peculiar jurisdiction requires relief, then it will be given: again the following years, and so on, till the whole class of cases has been reached; but in the meanwhile the labours of the legislature have been greatly multiplied.

PROPERTY LAWS;—*Landed Securities (Ireland); Exchange of Lands Lying in Com-*

mon Fields; Tithes Stay of Suits; Fines and Recoveries (Ireland); Apportionment of Periodical Payments.

The *Fines and Recoveries' Act* is an instance of the trouble that is cast upon our legislature, by passing one year an Act for England, and the next one for Ireland. Only a year before the *Fines and Recoveries' Act* for England was passed. In terms, in nature, in almost all the circumstances they are identical. It would have required but little pains to have made them similar. The statute book would have had one statute less, and that a very voluminous one, and England and Ireland might have sympathized in the same reform.

The *Landed Securities' Act* is wordy. It is a good measure; but it has given rise to a singular discussion. Mr. Lynch, a Chancery barrister, practising in London, was the author of it; but the Irish lawyers conceived that it was calculated to withdraw business from the Irish courts to the English; and forthwith took umbrage. Mr. Lynch defends his measure; but the curiosity of the attack and defence consists, not so much in the merits of the case, which are unquestionably on Mr. Lynch's side, but in the tone of the controversy. The spe

the oyster seems to be the chief aim. To a spectator it would be natural to inquire, why there should not be at once an entirely concurrent jurisdiction in the courts of equity in Ireland and England? A more searching reformer would perhaps ask why they should have separate courts?—Why, though there might be a Vice-Chancellor there, all appeals should not be decided by the Lord Chancellor here?

The *Exchange of Lands lying in Common Fields' Act* is of the same nature. A specimen has been given before in the section on words; see page 8. Here is another:

“ And be it further enacted, That the fees and charges to be demanded by and paid to any steward of a manor for entering on the court rolls of such manor any deed of exchange or other instrument required by this Act to be entered thereon, shall not exceed the sum of sixpence, for every law folio of seventy-two words contained in such deed or instrument.”

Which might have run thus,—

“ And be it enacted, That the fees and charges to be paid to any steward of a manor for such entry shall not exceed sixpence for every law folio of seventy-two words contained in the deed or instrument so entered.

What was to be entered had been expressed in the last foregoing clause.

But the point that most deserves attention is the institution of a new tribunal, a new method of procedure. This new tribunal consists partly of a judge at *nisi prius*, and partly of a barrister. Much might be said of the policy of the institution; still more of the cognizance which is any where obtained of what takes place under it. Causes are regularly tried in open court—Are these summary matters so proceeded with? It ought to be the very principle of a judge's acts, that they be done in public. The functionaries are exempted from all other control, except the remote one of a removal on an address from both Houses of Parliament; and both for the public good and their own, they should be subject to the wholesome influence of publicity. This is becoming very necessary to be urged, as new powers and jurisdictions are constantly bestowed upon them.

The *Apportionment of Periodical Payments' Act* is another instance of numerous defects. It more especially exemplifies the necessity of asking, when a law is passed on any subject; whether there are not things of the same kind in the same predicament. In the reign of George the Second an Act was passed .

provide for the apportionment of the accruing rent for the quarter which had not elapsed when the tenant for life died. As by law it did not accrue until the day of payment, if the tenant for life died, he lost all, and the next comer took all, though there should be wanting only a single day to complete the period of payment. Then it was doubted whether payments of a similar kind came within the wholesome purpose of the remedy, and a period of ninety-four years has elapsed before the doubt is cured. The present act proposes to extend the rule to all cases except where there is no stipulation to the contrary, and except annual sums payable on policies of assurance.

This is also a case where the existing law should have been reprinted, and altogether remodelled. The Act, however, should have been two-fold. Declaring the extension of the old law; next, extending the law to all after cases.

The wordiness of the Act is abundant. It is also conglomerated. A very little care would have removed both these defects, and the excellence of the execution might have equalled the utility of the enactment.

PARTICULAR TRADES. — *Factory Amendment Act ; Flax Bounties Repeal ; Conveyance of*

Fish Act Amendment ; Sale of Hay Act Amendment ; Sale of Tea ; Chimney Sweepers' Regulation ; Proprietors of Newspapers (Ireland) ; Sale of Beer Act.

The *Factory Amendment Act* was introduced to declare that the months referred to in the former Act should be calendar instead of lunar months. The courts have decided for the latter, wherever the distinction between lunar and calendar has not been specified. The courts have often lamented that the decisions had not been otherwise, but feel bound to adhere to them. The lamentation is many years old. The *Chimney Sweepers' Act* is the subject of especial notice elsewhere. The *Conveyance of Fish Act* is an amusing instance of the verbal difficulties to which our draughtsmen are exposed. It is intended, by that Act, to relieve all fish imported into London by the Nore, from a particular regulation. The fish are described after this manner:—"Any Salmon, "Salmon Trout, Turbot, Large Fresh Cod, "Half Fresh Cod, Haddock, Scate, Fresh Ling, "Soles, Whittings, or other Fish"; and the vessels in which they are brought, "any Fishing "Ship, Sloop, Smack, or other Fishing Vessel "or Vessels." And these words make up a great portion of the Act. The *Sale of Tea Act* is a specimen of the careful clearing

of all the parts of a thing, after the whole body of it is dismissed. The object of the Act is to repeal sundry provisions of Acts, which require that deposits be made in respect of tea sold at the East India Company's sales—and after a very full recital of all such clauses, they are positively repealed; but, to make surety doubly sure, the crime and all possibility of committing it having been done away with, the Act goes on to repeal all the incidents that follow; “and that all and singular the Regulations, Forfeitures, Penalties and Disabilities mentioned and contained in the said several recited Acts, in relation to the Payment or the Non-Payment of Deposits in respect of Teas sold at the East India Company's Sales, shall thenceforth cease.” The page and a half of elaborate recital might have been more pointedly replaced by a recital of some ten or twelve lines, fully serving the purpose. The *Sale of Beer Act* is worthy of a commentary to itself. It is full of elaborate wordiness. One clause appears to have been so full of words that nobody could understand it, for it is repeated, in entire effect, in the next.—See the eleventh and twelfth clauses. The first of these contains twenty-four lines, of which nearly all the first seven and all the last nine may be struck out without lessening the effect or the expressiveness.

There is also, in the eighth clause, a specimen of the vice of specialty legislation, it declares a penalty for falsifying certificates. This should be a part of the general Law of Forgery or the falsification of documents and the consequences of their falsity.

The ninth clause is a repetition, in effect if not in terms, of the whole of the previous part of the Act. It declares that no licence for beer to be drank on the premises, shall be granted without a certificate, all the foregoing part of the Act having been directed to saying, that nobody should have a licence who did not possess such a certificate. This is one of the points which our legislators should especially regard—not to exclude a doubt which does not exist. The insertion of all provisions merely calculated to satisfy idle scruples, should be steadily resisted. A member, ignorant of the law, or not present at previous discussions, rises when a clause is in committee, and proposes something to make the matter clear to him. Other members thoughtlessly acquiesce; and the latter state of an Act is, in consequence, generally worse than its first.

The fifth clause is a sort of bye blow to the Mutiny Act. It, in a manner, over-rides that.

The whole Act is disgraceful. No lay person

could understand it without his lawyer; and that might not be enough without the assistance of a whole bench of magistrates.

It will be observed that many Acts have been passed over, while others have been cursorily remarked upon. To have noticed all would have required more space than this little book could afford. Besides, it was scarcely necessary to say more in order to shew the want of wholeness in our general scheme of legislation, as well as in particular laws. There is no other point of resemblance:—all our laws are alike deficient: they seem not to hang together—and the very merit of a law, where, as in some recent cases they have excelled, becomes by its peculiarity a defect: from setting up a distinction which is not real. Hence the importance of having a *comptrolling* hand—one which shall detect variances, and help the legislature as well as the maker of the law to preserve an unity in the general design.

STATUTES OF 1835.

In the last session the Acts commented upon were those of the session of last year. With a view to help those who are not disposed to examine the truth of these comments by a pains-taking reference to the Statute Book, it has been thought as well to employ the following examples of laws in progress, which now particularly engage the public attention.

The first example is the Bill for Amending the Registration of Voters under the Reform Act, and the next is the last Marriage Bill: the remaining examples are the Irish Poor Relief Bill and the Abolition of Imprisonment Bill.

THE REGISTRATION OF VOTERS' BILL.

This Bill should have been divided into two grand divisions at least:—1. Registration for Counties.—2. Registration for Cities

Towns. The matters in the Schedule might then have been appended to the divisions to which they belong.

But a further division might have been adopted—viz. The proceedings of the Court of Revision—as the two former divisions relate to the preliminary proceedings; and a completer arrangement would have given a fourth division—viz. Miscellaneous Rules for the guidance of the parties employed in registration, such as that which relates to the mode of computing distances, (s. 32.)

If this method were adopted, a very long and confused Bill, reaching forty pages, would be greatly reduced in wordiness, and the whole would become simple and intelligible, as the phrase is, to the meanest capacity: and surely as this branch of law relates to matters on which a peculiar jealousy is entertained by most politicians, and concerns nearly every class, it ought to have that recommendation.

The Bill is entitled, “A Bill for the more effectual Registration of Persons entitled to Vote in the Election of Members to serve in Parliament in England and Wales (make of it two Bills and add the title of one to the other) “for Cities and Boroughs,” and to the other “for Counties and the Divisions thereof,” as the case may be.

The following is a brief analysis of its contents :—

From 1st page to 9th—Recital of the parts of the Reform Act intended to be repealed.

From 9th page to 14th—Provisions for the Registration of County Voters.

From 14th page to 19th—Proceedings of the Court of Revision.

From 19th page to 22d—Provisions for the Registration of Town Voters.

From 22d page to 24th—As to Printing of the Lists—Payment of Expenses—Application of Produce of Sale of Lists.

From 24th page to the end of the body of the Act—Miscellaneous Provisions.

SCHEDULES.

From 28th page to 33d—Forms relating to County Registration.

From 33d page to 40th—Forms relating to Town Registration.

The first nine pages might have been comprised in one, by an enumeration of the sections repealed, and a general statement of their nature.

This would be much more simply done if the bills were divided, as the preamble of each then need recite only those parts of the Reform Act which concern the particular subject of that bill.

By the proposed scheme the forms relating to County Registration, which are contained in the Schedules from page 28 to 33, would have brought up to the main provisions relating to that subject; and the unity, which for clearness' sake is indispensable, would have been obtained.

The provisions relating to the Town Registration would follow, with their proper Schedules; and then the proceedings of the Court of Revision, which equally concern both, would succeed.

These divisions might have been observed if the subject of the Registration of Voters were to be brought within one law—and that law would be clear; but for the sake of easily tacking future amendments on the different branches of the law, they should be made separate Acts. Nor in practice would there be any difficulty, as they might proceed concurrently in the Houses of Parliament.

The Miscellaneous Provisions are truly miscellaneous; and it is not clear whether they ought not to be subjects of separate chapters of law. For instance, the thirty-third clause contains a direction to the returning officer as to his proceedings at the election. This surely does not relate to the registration. It belongs rather to the conduct of the election. It is true that the question is grounded on the registry:

but so are all the other election proceedings. There are strong reasons for giving to the presiding officer a simple manual of his duty. Part of it should not be gathered up in one place and part in another.

The thirty-fifth clause is worse. It belongs not at all to the subject of registration. This also belongs to the chapter on the Conduct of Electors, and should have immediately followed the thirty-third clause.

Again, the thirty-sixth clause as to the power of the House of Commons to decide upon the validity of votes registered. This, though it bears on the registration, belongs rather to the chapter of election law, which relates to the trial of petitions or the consequences of an election.

The thirty-seventh clause, as to the payment of the Revising Barristers, ought to have formed part of the chapter of Law, which relates to the Court of Revision.

If it should be thought proper to make the provisions relating to the Court of Revision the subject of a separate Act, it might be entitled thus:—"An Act for Regulating the Court of Revision of the Register of Voters, whether for Counties or for Cities and Boroughs, in England and Wales, and for the payment of the Barristers appointed to hold such Courts."

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If this new distribution of the parts of the Registration Bill were made, it would be found that its language might also be made more simple—the unity of object would explain the terms without the use of the formal elaborateness that now confounds the meaning. A good construction or interpretation clause would give further conciseness and simplicity.

These results would have been secured, both in the schedules and in the body of the bill, by a different mode of printing; for though it be but to the eye that this is done, that is enough, as it is to the eye that the matter is immediately addressed—and that which the eye can see readily the mind will be more apt to comprehend readily.

It is earnestly pressed upon those Members who feel a concern in making the laws simple and intelligible, to try the effect of these suggestions upon this bill. Though in its present shape it is very obscure, it would then be as remarkably clear; for in many respects it is by no means deficient in merit.

THE DISSENTERS' MARRIAGE BILL

Is another remarkable example of the defects of our present system of legislation.

Its first capital vice is the recognition in the same law of two contrary principles. The civil nature of marriage as to one class, its religious nature as to others. An incongruity which will be tested whenever a marriage is celebrated between a member of the church and a dissenter, for it is not clear whether in such a case the marriage must not, as to both, be deemed a civil contract.

There is, however, another anomaly scarcely less glaring. Some things are to be vouched for by declaration, others by oath; the object in both cases being the same—truth. If the declaration be a sufficient sanction in one case, why is it insufficient in the other? Both the matter vouched for by the declaration, and that by the oath are of equal importance, and an honest man's conscience would be as much hurt by a false statement in the one as by a false statement in the other.

These are not the only oversights. One object of the bill is to prevent clandestine

marriages, and yet, in some respects, marriages under this proposed law will practically be more clandestine than they have been hitherto. A seven days' residence in the place where the marriage is to be acknowledged, and then a fortnight's notice are required, but that notice is not to be published in any way. There is a power to visit the Justice, and inspect the notices in his keeping, but nothing further. These are sins in the grain, there are sins of form. The regulations affecting all people, illiterate as well as learned, ought to have been put in the simplest and most orderly manner, and the language should have been of the plainest.

The author of this law appears to have been so taken up with the form that he proceeds at once, after the recital, to enact that the seven days' notice shall be given to the Justice.

It had been better to declare at the outset that from such a day "all marriages between any two persons not being members of the United Church of England and Ireland, except members of the Royal Family, Quakers, and Jews, who shall be willing to be united together in matrimony, and unwilling that the same should be solemnized in the face of the church, according to the Acts of the church, shall be celebrated and acknowledged before a Justice of the Peace, and that the following conditions

and forms of proceeding shall be observed in relation to all such marriages; and until they have been so observed such marriages shall be invalid."

Then would follow the rules.

"Notice in writing shall be given by one of the parties in person to a Justice acting for the hundred, where such person shall have dwelt for the last seven days."

And so on, with all the proceedings as stated in this analysis.

1. PROCEEDINGS BEFORE MARRIAGE.

Notice to Justice of the Hundred, where the Party has resided seven days.

In case there is no Justice.

In case the Justice is prevented from acting.

Inspection of the Notice by any Party.

Fee to be paid to the Justice for Inspection.

2. PROCEEDINGS AT THE MARRIAGE.

Declaration that the Parties are not

Members of the Established Church

Oath that there is no Bar to the Alliance, that the Parties are of full Age, etc.

Consent of Guardians, where a Party is under Age.

How Consent is to be obtained, where they are disqualified.

Acknowledgment.

Fee to be paid to the Justice.

3. PROCEEDINGS AFTER MARRIAGE.

Justices to send the Acknowledgment to the Ministers of the Parish.

What the Minister is to do with it.

4. GROUNDS OF INVALIDATION.

Knowingly giving the wrong Names of Parties in the Notices and Acknowledgments.

Proviso. Acknowledgment to be conclusive as to all Matters but the falsity of the Names of the Parties.

5. CONSEQUENCES OF A MARRIAGE FRAUDULENTLY OBTAINED.

If acknowledgment be made by means of Perjury, Estate of Offending Party to go to the children of the Marriage.

6. MISCELLANEOUS PROVISIONS.

Punishment for Forgery or Defacement of any Acknowledgment or Entry.

Notices and Acknowledgments to be
Post Free.

Construction Clause.

Directions to King's Printer to supply
Ministers of Parishes with appropriate
Registers.

7. SCHEDULE OF FORMS.

Notice to be given to Justice of the
Peace.

Declaration to be made and signed by
both Parties.

Oath of the Parties.

Acknowledgment to be given to the
Justice.

The reader, who is sufficiently interested in this matter to compare the foregoing analysis with the bill itself, will find, that in this analysis the provisions of the bill are transferred. Each part is brought in connexion with its kindred matter, and the entire law is arranged according to the order of the events which it contemplates. In consequence the coherence of the parts of the scheme and the relation of the minor to the mere leading divisions may be discerned with as much advantage to the memory as to the understanding. Were this plan usually adopted the defects of our legislation would soon be

discovered by those who feel that their own characters as statesmen are bound up with the Acts of the legislature.

THE IRISH POOR RELIEF BILL

Introduced by Sir Richard Musgrave, deserves mention as an improvement on the old methods. The general commencement of each section—"And be it enacted," is omitted, except in the first instance.

The Act begins with reciting that the state of the poor of Ireland requires the interference of Parliament (a preamble by the way which has no use, since it is to be presumed that the legislature would not interfere if it were not necessary,) and then it enacts, That every Irish parish shall have power at discretion to relieve any helpless poor resident therein, and in cases of temporary general distress therein any other poor resident therein, and to assist in preventing mendicity, and that the duty of executing this Act shall primarily devolve on a committee. For which purposes, Be it therefore further enacted, as follows, namely.—It then proceeds through forty clauses, to detail in plain English the provisions of the bill.

The bill is not, however, free from defects of other kinds, but these are attributable to the prevailing methods of drawing laws, as well as to the general state of the law. The chief defect is the apparent disconnection of the parts. This may arise from the want of an analysis, which would have at once displayed the outline of the scheme, and thrown into subordination the minor constituents of the measure. Some of the clauses are too long. This is caused by the want of an authorized division of the sections.

The schedules appear to be very complete, and are printed in a readable type.

Upon the whole, this bill may be recommended as an example of the possibility of making *English* laws readable, and what may be done by individuals in this way. But still it must rest with the government chiefly to make the best methods the uniform rule, as the largest share of legislation falls to the care of the different departments of the executive.

THE ABOLITION OF IMPRISONMENT BILL.

This measure is an illustration of the necessity of making the subject of an Act single in nature and number. Its title expresses four objects :

1. Facilitating the Recovery of Debts.
2. The Relief of Debtors willing to make lesson of their Property for the Payment of their Debts.
3. The prevention of Frauds by Debtors.
4. Abolishing Imprisonment for Debt, except in cases of Fraud.

This Bill would not have met with half so much successful opposition, if it had been made clear by an appropriate division of the subject. A fifth division might have been devoted to the machinery by which these above objects are to be accomplished.

PART VII.

**SUGGESTIONS FOR A STATUTE OF DIRECTIONS
AND CONSTRUCTIONS.**

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SUGGESTIONS FOR A STATUTE OF DIRECTIONS
AND CONSTRUCTIONS.

It were vain to expect a complete reform of our statute law, without the aid of some general scheme of operation, by which the uniformity of expression and structure may be secured, and without the concurrence of the Courts of Judicature.

Neither of these objects can be obtained, except by the intervention of a legislative enactment, affording directions for the framing of our laws, and laying down rules for the guidance of the courts in the construction of them.

The author will not venture further, in this undertaking, than to throw out a few suggestions.

Mr. Dwarris, the author of an excellent work on the statutes, has prepared the ground: in this particular alone, his work is deserving of commendation. It is, however, such a one as a British legislator can scarcely dispense with. It gives a learned exposition of the principles of the

statute law, and of the process of working the same in Parliament, and an interesting and most useful summary history of the progress of our statute law. Nor are the author's remarks, on the boundaries of legislation and of judicial interpretation, the least deserving of attention.

The author of this work has availed himself of the material which Mr. Dwaris has collected together.—This advantage has enabled him to perform with greater ease, one peculiar purpose of this work, the laying together a scheme of rules by which the statutes may be reduced to one simple, clear, and regular mode of expression and of form.

But that the reader may not be led to suppose that the adoption of these suggestions will effect more than they are fit for, it will be necessary to notice some of the causes which have led to the present state of our statute law.

The most prominent has been the notion, that the statute law was in a state of antagonism to the common law, that these two sorts of law were in their essentials different from each other. It was over-looked by many that the common law is, in nature, the same as the statute law, with this difference—that the evidence of the latter is more complete; and that therefore what in the one case has assumed the form of tradition, handed down by the agency of custom

or other casual and imperfect methods, differs from the statute law, only as more recent and well authenticated histories usually differ from earlier accounts of a people.

The early statute law very much favoured the continuance of the common law, and confirms this supposition. It was originally similar to the general orders or special orders of our Courts of Equity, made on the statements of a petition to the legislature. The instance was used as an illustration of the general law, and became thenceforth the guide of the judicature in matters of the same sort, in the way that our precedents are now their guides.

The indefiniteness of the law arising out of the merely supplementary character of our statute law, and the consequent sanction which was thus afforded to the authority of the common law, gave to the courts a power of interpretation, that in its effects it has, at some periods, exceeded the power of the legislature itself.

This evil is now recognized, but we are likely to fall into a contrary one, out of very abhorrence of the enormities we would abandon. This, to be sure, is the course of reforms; but, if any reliance may be placed on the increased intelligence of the age, there is some reason to hope that the exposure of the tendency may go far to moderate it.

To avoid the recurrence of the present evils we now want our laws to be so precise, not only in the expression of the broad general principles which should make up the spirit of the law, but in all the modifications of circumstance, which it may assume through neglect or evasion in the multitudinous affairs of life. What is, properly, evidence of the falling within the operation of the law, is, with its endless kaleidoscopical changes to be specified in the law itself, and then the theory is carried forward that all these possible modifications of crime, say it is, are to be met with the peculiar penalty of each, measured with nice exactitude, in regard to its gradation of enormity.

The impossibility of effecting objects so large has deterred many from entertaining the attempt to consolidate the law, and the same exaggerated expectation has led to the supposition that the French code is a failure. And it must be confessed, that, from an inattention to all the possibilities of the case, it has been in some measure a failure, though that is ascribable rather to the nature of the institutions of France than to the law itself.

Not only were these institutions without the popular character that has so effectually operated on the English law, but the lawyers, learned in old law, to whom the construction

of the new was entrusted, could not cast away all the prestige of the ancient legal notions, and therefore, could not nakedly construe the new code. Impressions out of the record were drawn in to aid its construction. This, though an evil, is one inseparable from the human mind. It must follow all codes of law, so long as men of the old school are to be judges of modern fashions.

To understand the force of the term common law, it should be called general law. It means all that is within the limits of the constitutional institutions. It is rather the atmosphere of the law than the law itself—the sum of the aggregated effects of the law. Let a statute be ever so minute it would be impossible to exclude it altogether. It will exercise some power over the most rigid construction. This has been the error of law-makers; they have fancied they could make a law by a few touches of the pen, when they could not control the force of their own language. Law, like language, must be construed with reference to the state of things that exists at the time,—to what is called the genius of the language. The common law, as it is called, is the genius of English law; and if a code should be made to-morrow, the letter of it must be construed with reference to such general spirit, both because the minds of th

Judges could not wholly cast off the influence of the spirit of the nation; and because a law, which should establish a peculiarity contrary to the prevailing spirit, would be abrogated by general consent, in a country in which free institutions abound.

But the loudly called-for proposal to consolidate our law, both common and statute, is not on that account impugned. On the contrary, the principle contended for establishes the necessity. We are now governed by the legislative spirits of many deceased ages. Our law is a compound of Saxon and Norman, and every succeeding period of legislation, and is in the same state of confusion in which our language was before the master mind of the learned Johnson embodied it in a single lexicon. As in that case the work would not be perfect at once, but it would be in a state to receive all those corrections, which, in spite of the greatest learning, the keenest sagacity and the most patient industry always remain to be introduced, because the physical powers, and that property of mind which forbids full attention at one moment to more than one object, would not permit, in the limited period of workmanship, the turning over the subject in all its bearings.

The fault of our law is the specification of new rights and duties and remedies springing

out of the new circumstances of the time, and the defects of institutions designed for a different period. At this time, a general rule would be made to comprehend many particulars, which now have a property in peculiar laws. Institutions would be framed with more especial regard to the circumstances of this period; and though, from the changes that must come, they will not be for ever suitable, they are likely to be more so than the foregone, and therefore to be more congruous with the general frame of the law. In fact, the spirit of the law would be more simple and pervading.

The object then should be not to destroy the common law, but to lay its foundations anew, wider and deeper.

But the beginning of all reform, in this direction, must be made in the understanding of the common force of our words. We must, in short, begin our alphabet, learn to spell, and make short sentences, which we can understand before we proceed to any scheme of consolidation, lest all our efforts should have that sort of incomprehensible vagueness which makes up a boy's theme.

When this first step has been accomplished, we must make some general rules for our guidance in the composition of statutes. We then come to know the abstract value of a general

what it will comprehend, how to give fulness, and wholeness, and clearness, and congruity to these legal essays. This is the object of the present section.

It will now be attempted to shew, by a collection of certain rules which even now obtain in the law, that if such rules were rigidly adhered to in the framing and construction of our statutes, many of the past evils of the statute law might be reduced, and the whole brought into a condition of great simplicity. The maxims on this subject are exceedingly numerous, but they are reducible to a very few principles; and in the following suggestions, an endeavour will be made to reduce them to these few principles—at the same time giving a few other practical rules, which may be adopted for the sake of simplicity and uniformity in future.

This collection of maxims is by no means complete; but it is sufficient to shew that what has been recommended in this book is not an entire novelty. The courts have endeavoured to be as reasonable, and consistent in their reasonableness as the multifarious nature of their documents—the statutes—would permit them to be. The fault has rested with the legislature rather than with the courts. The following versions are given, in all their variety, in order to establish how much might be done without

the aid of a Statute of Constructions, and of what a Statute of Constructions should consist.

These rules consist of such as relate to—

1. Language of the Law.
2. Persons.
3. Powers.
4. Times.
5. Places.
6. Remedies and their Incidents.
7. Repealing Statutes.
8. Reviving Statutes.
9. Substitution.
10. Miscellaneous Rules of Construction.

The arrangement is not quite orderly, nor the collection complete. Like the rest of the work, it is offered by way of indication.

LANGUAGE OF A LAW.—

A positive expression admits of no exposition.

The Imperative shall be expressed by **SHALL**.

The Discretionary - by **MAY**.

These two words may be said to be the whole law. The key stones to its two great arches,—direction and permission. The strict use of them will produce a wonderful change in the style of our Acts of Parliament. Hitherto it has been usual to say: "It shall and may be lawful;" and, singular enough, very grave doubts have been raised upon the Yes and

expression, whether it was in some cases imperative or discretionary. The doubts could only be settled by a reference to the context, and this has not always served to dispel them. By saying, at once, that "any body shall," or "that any body may" do, such a thing, there is an end of the doubt. Moreover, half the verbiage of our acts may, in this way, be got rid of, for it is usual to say, that it shall and may be lawful for such an one to do so and so, and he is hereby authorised and empowered and required to do so and so. The simple term "shall" or "may," will answer the purpose. It may be they speak too plainly—that the indirectness of courteous phraseology is not regarded, but the legislature has no personality, and no one's pride need therefore be hurt. These important words should always be printed in a distinct character, as in Old English, in order to point the attention.

Where the male sex is mentioned the female shall be included.

Where the singular or plural is used, the other shall be implied.

These are now common rules of construction, but not universally regarded.

The prohibition of the least excludes the greatest; and the grant of the greatest includes the least. The singular should, therefore, be used in prohibitions; the plural in permis-

sions;—as, No person shall do so and so, and every person, or all persons may do so and so.

This may be some help to people who find it difficult to make choice between the plural and singular.

The expression of things which are silently present is of no effect.

This is a rule but little borne in mind in making our present laws. The writers seem not to know when they have said enough. Nor is it more strictly observed in the practice of the law. The great source of doubt and difficulty in the construction of the statutes is the excess of statement.

PERSONS.—

The law addresses all in the same language.

This is a quaint way of saying, that it makes no difference in its requirements, whatever be the rank or condition, sex or age of the parties affected, which is not quite true, though it ought to be.

An Act of Parliament binds all persons, but such as are especially saved by it.

This is but another form of saying the last rule.

If an Act speaks of the King generally : indefinitely, being named in his politic c

city, it extends to all his successors, and to a Queen, if the crown descends to a female.

The same rule ought to be extended to all Functionaries, and would be a very useful one.

Every enactment relating to the office of a public functionary, shall alike apply to every person or number of persons for the time executing the functions of that office by whatever name such persons shall be styled, and whether or not they be specially mentioned.

Enactments relating to the superior of an office shall alike apply to the deputies or subordinates, acting in the execution of the same office.

Directions to a public functionary shall be construed according to the extent and nature of his commission, whether that be by the king's authority, or by a former Act of Parliament.

This is but an exposition of the principle that every Act shall be construed according to its subject matter.

When any officer is directed to do any thing, he shall do it in all the usual methods ; if no other be expressed.

This rule ought to be too obvious to name ; but it is directed against a common scheme of naming all

modes of proceeding in our Acts of Parliament—or rather sometimes naming and sometimes omitting.

POWERS.—

Wherever a power is given by a statute, every thing necessary to the making of it effectual is given by implication.

If the whole be given every part is given, and the incidents are given.

This is a large rule, covering a multitude of special cases. If it were admitted in our legislative and conventional instruments, one-half of the verbiage would be removed. The business would then be with the exceptions.

The next rule is a corollary from the foregoing; but the specialty notions that prevail regarding the strict literal obedience which all functionaries must render to the law, requires that it should be distinctly expressed.

Wherever the power to do a thing has not been satisfied, the grant of such power shall imply the power of revocation wholly or in part, and the re-doing wholly or in part, what has been done.

Thus the power to appoint servants implies the power of dismissal, and appointing others.

The power to make regulations or fees, to unmake or regulate.

The power to delegate, to revoke delegation, and again to delegate and again to revoke.

But all powers of revocation are clogged with the first condition, that no law should have an *ex parte facto* operation. The functionary can only undo an agency existing, and still under control. Whatever has terminated in completion has passed beyond revocation.

TIME.—

The application of Statutes, as to times past and to come, and subjects arising before and afterwards.

An enactment shall take effect from its passing, and have relation to all times, during its existence, if the contrary be not expressed.

A statute has relation to the future, and not to the past ;—that future dating from the passing of the Act. Except it be a declaratory act, and yet that has relation to the past, not by creating a novelty, but by declaring what had before existed and was doubtful.

An Act of Parliament cannot alter by reason of time.

Statutes shall affect persons and objects existing as to all things done after the passing of such statutes without express words applying

to them; except it be private acts of convention or contract, and then only when such application to the past shall be expressed.

Statutes shall also affect subject matters, of subsequent creation, if such subject matters be of the same kind as that to which such statutes refer, whether those subject matters be acts of convention or not, except where such acts of convention do not contravene the law.

This is conformable with another rule : that whatever is within the reason of the law shall come within the law itself.

When no time is specified for doing a thing, it shall be done with all convenient speed, as often as the prescribed occasion shall arise, until the direction of the law shall have been satisfied.

Wherever a statute imposes terms, and prescribes a thing to be done within a certain time the lapse of even of a day shall be fatal.

PLACE.—

Localities shall have relation to the subject matter; if it be judicial, then to the legal or equitable jurisdiction; if ecclesiastical, to the

ecclesiastical; if to counties, to its divisions; and so on.

REMEDIES AND THEIR INCIDENTS.—

Whenever any thing is prohibited, every thing is prohibited by which that may come about.

This is the converse of the proposition—that when any thing is given, all incidents are given. It is nothing more than the principle that the law cannot enter into a detail of circumstantialities; but that these must follow. Our law had been without its chief defects if these rules had been observed.

Whenever a statute gives or provides [or forbids] any thing, the *general* law provides all necessary remedies and pre-requisites.

This is a rule of the courts; but it has not always happened that the requisites have existed—nor even the remedies, in spite of all the efforts of the courts to strain their fictional practices. This should be a part of the general economy of our institutions. If they were wisely constituted this rule would have been apt.

A right conferred by a statute gives there-
v remedy by action.

Every statute made against an injury gives a remedy by action, expressly or impliedly.

These maxims are identical. There cannot be conceived an injury without a right, nor a right without a remedy, Each is the converse of the other.

A prohibition in a statute gives, without express mention, the remedy by indictment.

It only requires to extend this rule to the proceedings before Justices to make the law consistent.

Wherever the provision of a statute is general, every thing which is necessary to make such provision effectual is supplied by the common law.

This, again, is the former rule, expressed in a different way. The lawyers have applied these rules chiefly to the procedure by which the law shall be judicially enforced; but this is but a lawyer's view. The statesman and the legislator must have regard to the ordinary means by which a thing may be carried into effect. Recourse to the agency of the law should be his last expedient.

COSTS :—

Wherever a party has sustained damages, he shall recover costs as well as damages, though the enactment giving the remedy do not give costs.

The rule ought to be more extensive: where

STATUTE OF DIRECTIONS, ETC.

It gives a remedy, it should give costs: otherwise the remedy may prove a new injury.

An informer shall have no costs if they be not expressly granted.

This is the rule; but it is not consistent with the policy of employing informers. The reward is given them to ensure the conviction of offenders; by paying the costs the reward is reduced: and looking at the chance character and uselessness of the law, the reward is reduced to what makes the prosecution an unfavourable speculation. The informer will not take the risk, and the law becomes inoperative. If the policy be adopted carry it out to the full, giving it all the benefit of a decisive energy.

A public officer, prosecuting for the benefit of the public, is not entitled to costs.

It would be a good rule to give costs—which should go to the king, the county, and the officer, in equal divisions. Where the informer took the officer's place, the same division should apply. In the last case it might be wise to regulate the movement of the latter. Here the intervention of a grand jury would be of great service. The law punishes a barrister, and sanctions an informer.

PENALTIES.—

The words “shall forfeit,” shall vest the forfeiture from the time of conviction.

Not necessary, therefore, to say, as is sometimes done, shall "forfeit and pay" on conviction so and so. The law presumes no man guilty till he be proved to be so. A forfeiture implies payment, or it is no forfeiture.

Whenever a forfeiture or penalty is given against him who wrongfully dispossesses another of his duty or interest, he that has the wrong shall have the forfeiture or penalty.

If a forfeiture be given for a collateral thing, the king shall have it; but where it is given in lieu of property and interest, it shall go to the person injured.

Where it is given for a crime the king shall have it, though he be not named.

Crimes are several, though debts are joint. The whole penalty shall be enforced against each offender, though they join in one crime.

This rule is limited by the next.

Where the penalty is in the nature of a satisfaction to the party grieved, but one penalty shall be enforced.

There is a third rule, viz.—

Where an offence created, or made fraud by statute, is in its nature single, a single penalty only shall be recovered, though several join in committing it; but

if the offence is in its nature several, each offender is separately liable.

When a penalty is created, and one moiety is devoted to be for the use of the king, and the other to a common informer, the king may sue for the whole, unless a common informer has commenced a *qui tam* suit for the penalty. In such case the king may recover by an *ex-officio* information.

If a penalty be annexed to the offence, and yet is not mentioned in the same clause which declares the offence, the common law remedies shall not be taken away. The party may sue for the penalty, and indict for the misdemeanour.

This is the existing rule. It ought not to be. The offender should not be exposed to the oppression of a double prosecution. But this is the result of an attempt to help the maimed condition of our general judicature for special causes. There should be but one offence of the kind—one court for its trial—and one penalty for the same offence in the same degree.

REPEALING STATUTES.—

An Act of Parliament may be repealed by the express words of a subsequent statute, or by implication.

The old rules were, that a subsequent negative statute shall repeal a former one—and that

Every affirmative statute is a repeal, by implication, of a former affirmative statute, so far as it is contrary thereto.

Thus a later Act supersedes a prior one on the same point, whether such prior Act be expressly repealed or not, if the later and prior provision cannot stand together. This rule has been carried so far, as that the latter part of a statute shall be preferred to a former part, where they do not agree; because it is supposed that the latter parts received the latest attention of the legislature; but the later rule is that the whole shall be taken together. It would be a good rule that no Acts be repealed but such as are specifically mentioned: and if cases should arise on conflicting statutes, they ought to be reserved for Courts of Equity. The common law courts ought not to strain the plain purport of the law. This plan would bring such clashings before the legislature, and remove the power of interpreting statutes, on equitable rules, which has given rise to much of the laxity of interpretation that has obtained in our courts of law. But, in order to reduce the number of implied repeals and substitute expressed ones, there ought to be an officer, of the nature of a recorder of repealing statutes, with whom should rest the charge of watching especially the contents of the schedule of statutes repealed, wholly or partially, and recording the same in a simple manner elsewhere recommended.

compile a table in the nature of a sheet almanack, and, at the close of each session, mark the state of the Statute Book. The original of this document should form a part of the parliamentary records. The office would be a highly responsible one, but of a clerly nature. In the present state of the law it might be arduous; but as the work of consolidation advanced the labour would be much lessened, and the table would, in the same degree, be condensed.

THE EFFECT OF A REPEAL.—

That the repeal of a statute, by which any offences were punishable thereunder, but which shall not have been tried before the passing of the repealing statute, shall not relieve the offender from his liability.

This rule should extend to all acts and offences, and liabilities named before the passing of the repealing statute.—The following is a rule on this point:

Where one statute is repealed by another statute, acts done while it was in force shall endure; *but not if the former Acts be declared void.*

The latter part of the rule ought not to be. If the legislature suffer a law to remain on the Statute Book, it should have the force of law for all that is done under it. If the design be to exempt parties from the penal consequences of the former law, the merciful

dispensation may be aptly expressed in terms, in the Repealing Statute.

The repeal of a statute, which repealed a former statute, shall not revive the former statute without express enactment.

At present the contrary is the rule; and a very inconvenient one it is, while the laws are in their present scattered form.

REVIVING STATUTE.—

A reviving statute shall be construed as a part of the original statute revived.

This rule should be applied to all statutes that grow out of former ones. They should form one law.

SUBSTITUTION.—

A substitute shall be of the same validity as the thing for which it has been substituted, if nothing be said to the contrary.

This is a corollary from the principle that the law is only repealed where a later Act interferes with the former.

All things relating to the subject matter of a law shall remain unchanged in character and condition, as before the Act was passed

nothing be said to the contrary—and only so far as the contrary is said.

This is a corollary from the rules, which wisely provide for the predominance of the general law.

MISCELLANEOUS RULES OF CONSTRUCTION.

The following rules all imply that the reverse is not expressed; according to the law maxim, that what is expressed, makes what is silent to cease.

Provisions which treat of things or persons of an inferior rank cannot, by any general words, be extended to a superior.

It were better to use the largest terms, and except; and, if possible, give the reasons of the exception.

In old statutes, the mention of a particular place, or thing, or time, was held to apply to other places, or things, or times, in cases of a like notice. The particular instances were taken only as examples of a generality. This arose from the then character of statutes, which, in the nature of a general order, or particular order of the now Court of Chancery, on points submitted to the legislature on petition.

This is one of the many paraphrases of the rule, that every Act is to be construed according to its subject matter. This subject matter ought always to be set forth in the title.

The Act of the law is injurious to none.

This should also be a legislative rule rather than a judicial one.

In construing the words of an Act of Parliament, the terms are to be understood as having a regard to the subject matter.

This maxim is of the largest import—for it implies that all the legal incidents of a subject are to be taken into account.

Statutes of explanation are all to be construed beneficially—yet only according to the words.

A better rule that they be construed according to their plain import; and where that is not plain, not at all. Statutes of this sort are generally like other explanations—they make matters worse, and encourage fanciful doubting—from the child-like capacity, which some men have, of pulling down, by way of learning how to put up.

A beneficial law affords a remedy in a like case.

This is another modification of a large rule—viz., that what is within the reason of the law shall be within the law itself.

Statutes made for the public good ought to be liberally construed.

Statutes made against fraud shall be liberally and beneficially expounded to repress it.

Statutes penal are to be construed strictly.

These maxims are loosely expressed, and have given rise to loose interpretations. The natural import was, that the Act should be construed with reference to its object—neither liberally nor strictly, but with a view to that.

Statutes against frauds to be construed with a view to the remedy.

This is also an exemplification of the rule last referred to.

The law should tolerate a private loss before a public evil.

Statutes always to be so construed that the innocent, or he in whom there is no default, may not be damnified.

Where the meaning of the statute is doubtful the consequences may be considered in the construction.

This is another illustration of the rule that every statute is to be construed according to its subject-matter.

Enactments which take away the trial by jury, and abridge the liberty of the subject, ought to receive the strictest construction.

What is here the rule of construction ought to be the rule of legislation. The maxim means nothing more than that the general law shall not be superseded by a special law, where that is not plainly designed to supersede it; and the rule is a wise one—but wiser for the legislator than the judge—better for the prevention than the cure.

A power derogatory to private property must be construed strictly, and not enlarged by intendment.

This maxim is of the same sort as the last—and the same observations apply.

A statute which gives a new remedy by *summary proceeding*, shall be confined strictly to the special objects for which the remedy is given.

This is but the former maxim differently expressed. If all remedies were summary, as they ought to be, this restrictive rule would cease to cast an imputation on the general administration of the law. The regular, that is the dilatory and costly proceeding, should be the exception—the summary, the rule.

In revenue laws, where clauses inflicting pains and penalties are ambiguously or ob-

scurely worded, the interpretation to be in favour of the subject.

This, in accordance with the single principle that the general law shall prevail where it is not expressly superseded by the special law. The general law is, that the people shall not be taxed without the consent of the Commons; and it is wholesomely presumed, (whether truly or not is another matter,) that what it means it will speak plainly.

In statutes made for the advancement of trade and commerce, judges will lean against forfeiture where the clauses are obscure.

This is the foregoing rule in its converse application.

Every charge upon the subject must be imposed by clear and unambiguous language.

It is the vice of legal maxims to apply them to specialties. Not only should every charge upon the subject, but every direction and prohibition should be expressed in clear and unambiguous language. All laws are in the nature of charges—not general, may be, but individual: if they apply not to the people, they apply to classes—they confer on one man, and take from another. All ought, therefore, to be clear and unambiguous.

Whatever comes within the reason of the law, shall be deemed to be within the law itself.

Hence it is better to express in the preamble the principle of the new law, than drily recite the terms of the old law and the expediency of repeal or alteration to it, which appears to be the most approved method.

Some things are exempted out of the provisions of statutes by the law of reason, though not mentioned as things for necessity's sake, or to prevent a failure of justice.

This is the converse of the last maxim. It is nothing more than what does not come within the reason of the law, shall not be within the law.

They might be more shortly expressed in the following terms, and their connexion would be more apparent.

Whatever comes within the reason of the law shall be within the law itself; and

Whatever comes not within the reason of the law, though not expressly excluded, shall be exempted.

All these rules are to be taken with allowance. The maxim that a positive expression admits of no exposition, must be borne in mind. If a thing be

expressly included, it is clear there is an end of the controversy. Most of these rules have resulted from the diverse manners of making laws. The courts have puzzled out a great many rules to help them. If an Act were made uniform, and the principle were clearly expressed, there would cease to be any occasion for many of them.

The two excellent rules in Livingstone's Code are in the same spirit, and more specific.

“ The enumeration of certain acts, which
 “ shall constitute the offence described, shall
 “ not exclude any acts coming within the definition ; and

“ The declaration that certain acts are not
 “ considered as offences, shall not restrict the
 “ exception to those particular acts.”

An examination of the foregoing maxims will demonstrate that they are all included in the following four :—

1. The general law, *i. e.* the common law, shall prevail except where it is limited by an express special law, and then only to the extent of the limitation.

2. The law, though it does not look back, extends over the future without limit as to time, and has regard to all persons, places, and objects.

3. The language of the law is to be construed according to its plain import—and where it is doubtful, according to the purpose of the law.

4. In construing an Act of Parliament, every part of it shall be considered ; and if the Act be a part of a body of law relating to the same subject-matter, the whole of such body of law shall be kept in view : and if not, then the matter, be it person or thing, time, place, or procedure, shall be referred to that part of the general law which relates to that point ; and as to that point, the general law and the particular law, shall be regarded as one.

Herein are contained all the foregoing maxims—the courts of justice need no others : but the legislature should take warning from the difficulties and even the temptations to which it has subjected the judicature—and,

1st, So frame the general institutions, that it may not be necessary to establish a special remedy in each case, but the rather breaking down unnecessary and obsolete technicalities, restore and enlarge the principles of the common law.

2. As a consequence of the foregoing rule, to eschew the making of peculiar laws in favour of persons, places, or objects, or in regard to time ; and if an

exception be unavoidable, carefully to limit it to the peculiarity of circumstance and condition by which it is called for; and,

Lastly, To make the language of our Acts of Parliament so complete and so uniform, that they may indeed speak one language to all, and that plainly.

But it is not sufficient to declare general rules: the observance of them should be ensured by the employment of a suitable agency!

1. As to the officers by whom the Act shall be carried into effect.
2. As to their proceedings.
3. As to the form of the law.
4. As to the rules of construction to be observed alike by the framers of the law, and by all courts of justice and public functionaries.

1.—AS TO THE OFFICERS BY WHOM THE ACT SHALL BE CARRIED INTO EFFECT.

They ought to be the following:—

- i. Verbal Reviser. To peruse every Act before it is presented to the legislature and between its several stages in its progress there, in order to preserve an uniformity and propriety of expression.

2. Clerk of Repeals. To classify an index of all statutes heretofore or in future passed; to note such as are repealed wholly or partially.
3. Maker of Indexes. To watch all the forms of all the statutes passed; to note all peculiar provisions and record them, and to revise the indexes to each Act; to arrange the indexes of each class of Acts, and to make the general index.
4. Reporter. To record all decisions of the courts on ambiguities of the statutes; to arrange such decisions according to the nature of the subject—and to note that, in all future legislation, regard be paid to the prevention of such doubts.
5. Clerk of the Papers. To receive all papers left at the office; to note the time of the same being left, and of their transmission from one office to another.
6. Comptroller of the whole Department. To superintend the operations of the office; and, where one branch is overburdened, to call in the aid of the officer who is at leisure, or engaged in work that may be postponed without

detriment to the public service, especially during the sitting of Parliament.

Each of the officers should have one or two assistants, that their employments might suffer no interruption from the illness of the principal.

2.—AS TO THEIR PROCEEDINGS.

These are more or less indicated in describing the duties of the respective officers. As the movements of the legislature would, in some measure, depend on the regularity and dispatch of this office, it would be necessary that an active superintendence should be instituted. The registry of the Clerk of the Papers would serve for this purpose, and it would also be some protection to the officers of this department against the caprice, the dilatoriness, or the impatience of others. Nor is superintendence sufficient without the means of removing impediments as fast as they arise. This would be the comptroller's task. When business is to be transacted with great rapidity and regularity, it is of importance—and this more particularly where the occupation is mental,—that the attention of the officer should not be diverted to many points. It is, therefore, proposed that there should be several officers with

their peculiar functions; yet the occasional employment of these officers in the functions of the other branches would quicken their attention to the bearing of the subject points of such other branches upon their own. It would also prevent them from sinking into mere routine machines—the too frequent mischief of official employment—which renders them slow to apprehend in what improvements may be serviceably afforded. As the duties of the different branches of the office are so nearly dependent, all the officers of the department with the comptroller for their chief, might form a council as to any points of difficulty.

The appointment of these officers should not be in the crown, but in the legislature; or, if the appointment were in the crown, they should be removable only by the legislature. Their functions would be of high responsibility. Occasions might arise in which they would come into collision with members of the executive, who must often prevail if they had the power of dismissal. It is not proposed that these officers should be legislative or judicial, but ministerial.

Whether the House of Commons should or not constitute standing committees of its own body, for the investigation and audit of different branches of state affairs, an office, construct^{ed}

as the one proposed, would be necessary, in order to preserve the wholeness of the law.

3.—THE FORM OF THE LAW.

For this purpose, also, a general form of law must be prescribed. Each law should be cast into a general mould, for the reasons that have been detailed in touching upon the several parts of an Act. It should consist of a short title—a full title—an analysis—the expression of enactment—the body of the Act, with its appropriate clauses, provisos, and exceptions—and of schedules for all necessary matters, and an index.

The arrangement should be a matter of special attention. It should be divided into leading heads, under which should be classed all subordinate matters. If the matter be of regulation to be observed at certain seasons, they should be treated chronologically—in the order of time; indeed wherever the events contemplated follow in succession, that succession should be regarded—but where the matters are altogether miscellaneous, each should be put with its kind, and distinctly separated.

Where the law is of the nature of a codicil, or supplement to another law, it should follow the nature and order of that law.

It is unnecessary to dwell upon these and kindred points, as they have been treated at sufficient length elsewhere. It is sufficient to notice their relation to the subject of this part of the work.

4.—AS TO THE RULES OF CONSTRUCTION.

It is not necessary to recount here all the rules of construction, nor would many be necessary, if the form and language of our laws ceased to be anomalous. Yet, under the best system, some would be required: and these might be framed out of the suggestions cast up and down this book. A glossary of terms should, however, form a part of the work, so that it should no longer be necessary for every considerable statute to carry with it its own dictionary.

One point has been omitted, which may probably be regarded as the great draw-bridge that must be first passed over before reform, in many of the particulars indicated in this book, can be accomplished;—and that point is

which the laws are submitted to the legislature, and afterwards enrolled. The engrossments may offer some impediment to reformation; but surely none but persons who see in the technicality the substance of their art, will think that it should prevail. There has, however, been a memorable instance of the sort. When deputy speakers, to assist the chancellor in his judicial office, were first proposed, it was started as an objection, that the constitution of the House of Lords would be thereby destroyed, or the appointments would be nugatory, as the judge, if not a Peer, could not deliver judgment till a Peer had moved, that he open his mouth. The engrossments are of little use in practice but to increase the labour and expense of law-making. The prints do all the real work. They are more easy to read; they occupy less space in the depositories of the records—and a seal and signature would sufficiently authenticate them.

APPENDIX.

- 1. GLOSSARY OF PROSCRIBED WORDS AND PHRASES.**
- 2. ABRIDGED TABLE OF STATUTES OF SESSION, 1834.**

A GLOSSARY

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PROSCRIBED WORDS AND PHRASES.

THIS glossary might be entitled "A Help to the Elongating the Verbiage and Phraseology of an Act of Parliament, or Statute in the way and manner heretofore used and accustomed by all legislators, lawyers, and other persons, or any, or either of them, who have been in anywise engaged or concerned in the drawing, preparation, making, and passing of the aforesaid Acts of Parliament or Statutes, or by whatever other name the same may have been denominated, called, styled, or entitled."

There are upwards of two hundred brace words, that are made to hunt in couples in our Acts of Parliament.

From the extreme wordiness of these documents it might have been supposed that this glossary would have been fuller. There are possibly many other words which would properly find a place here;—but the essence of the craft consists in the repetition of these terms and phrases, a hundred times over. It is the old story of Monsieur Tonson exemplified. An expression, if it have once got place in an Act, meets you at every turn. The expulsion of one word is, therefore, in effect the expulsion of a hundred. Extend this rule to ten or twenty, fifty or a hundred words, and the explanation of the prevailing evil of our laws, and the appropriate remedy is in a great measure supplied.

The Author had intended to give an explanation of each set of these words: but the task proved so childish and ridiculous, that he would not incur the risk of being supposed to call every reader fool or ignorant, by dwelling upon it. He has retained a few of the remarks, to shew of what sort of stuff the notes must have been made. By far the greater number of those in this list, tell their own tale,—you doing, Jack?" "Nothing, Sir."

“What are you doing, Bill?” “Helping Jack?” And of many more, it can only be said that there is no need of them, the term being included in one of larger import.

If such language could be found anywhere else, in any books; or if the Judge on the Bench, or the Counsel at the Bar, spoke after this manner in their judgments and harangues, the people might become reconciled to it. But they all put it off with as much delight as they do their wigs and gowns, whenever they can.

GLOSSARY.

ABATEMENT or deduction.

Abate or be discontinued.

Abrogate and annulled.

Act, matter, or thing.—The lawyers have no idea of abstract or general proposition; every idea must be deduced to a definite, tangible form. The word *act* here meant to apply to the physical doing of a man, the word *thing* to any thing that is reducible to shape as a house or deed. *Matter* is a neutral term, describing whatever is abstract in its nature as a

practice or proceeding apart from its forms. It is sometimes amusing to observe the distinctive uses which are made of these terms, and how often the writer does not know what he says, but uses the three altogether, from a mindfulness of the old maxim, "Between two stools."

Adulterated, or mixed with.—This is extracted from revenue laws, which are apt to forbid any unions, legitimate or otherwise, which have not been sanctioned by them. Hence it is made as criminal to mix, sometimes for good purposes, as to adulterate. Other people, copying the phrases, have used both where they only meant to employ one, and that the former.

Advance and lend; Advanced and laid out.—There is all the difference here between a tender of money and paying it—between a shewing of it in the hand and giving it; but in the manner of using these terms there is no such difference. To judge of the absurdity of some of these phrases, they must be seen in their places. They are put here in order to put the unwary on his guard.

Affidavits or affirmations.—An affirmation is an affidavit not taken on oath. It ought to have all the conditions of such a proceeding except that; and, (as the law is), where an affidavit is required, an affirmation should be taken from those persons who are by law permitted to make affirmation instead of an affidavit, wherever an affidavit is required from other persons. The word affidavit would, therefore, answer all the purpose.

All and Every; All and each; All whatever.—When all are subjected to a condition, every one and each is. This is of the old schoolman's species of precision—when men worked out treatises by quibbling on the shadows of words, for want of more substantial matter whereon to exercise their wits.

Alter and vary; Alter and effect; Altered or changed; Alter and amend.—All these are but brothers and sisters—or, at farthest, first cousins.

Applying for and obtaining.

Applicable and made available.

Appoint and direct.—What a man directs to be done he

appoints to be done. If the law give him the first, the second is included.

Apply to and mean.

Approved and confirmed.—Confirmation involves approbation.

Appropriated, applied, and distributed.

Attempt or endeavour.—Is there a difference here?

Ascertained and determined.

Authorised and required.—What a man is by law required to do, he is authorised to do. The requisition conveys all necessary powers. It is the business of the legislator to consider, in making his law, whether the duty to be imposed on the party is fit for him, looking to his fitness; or convenient for him, looking at his ordinary appliances; but when the requisition has gone forth, all the powers necessary for obeying the requisition are forthwith given.

Binding and obligatory.—These are Latin and English expressions of the same meaning.

Borrow and take up.

Borne and defrayed.

Better and more effectually.

Chargeable with or liable to.

Charged and chargeable,

Calculate and ascertain.—If an amount is to be ascertained, it must be done by the most suitable process—which is calculating. It need not, therefore, be said.

Claim, right, or title.

Collected and levied.

Commence and take effect.—This phrase is used in clarifying when an Act shall come into operation. On enough.

Commence or institute.—This phrase is used in describing the commencement of legal proceedings; but one them is enough.

Contrary notwithstanding.—"A positive expression admits of no exposition." These words are part of a phrase constantly used to guard against an unnecessary doubt on a positive expression.

Consent and approbation.—He who consents, in legal acceptation, approves.

Control and Management; Control and direction.—A family of words, that are remarkable for their family likeness.

Construed, deemed, and taken to be.—These words are never necessary. What the law says shall be, shall be.

Constituting and appointing.

Counted or reckoned.—Bidder, the calculator, says, that the difference between counting and reckoning is this:—“That a man *counts* on his fingers, and *reckons* in his head.” There wants a word to describe calculation on a slate or paper. This has given rise to very grave questions.

Crimes and offences.

Course and order of proceeding.

Cease and determine, (sometimes *wholly cease*.)

Costs, charges, and expenses.—Any body who pays the money sees no difference there.

Deductions or abatement.

Duly, well, and truly.

Delivered over to and placed under.

Deemed or considered.—A courteous admission of the right of the courts to construe the most positive expression according to the caprices of their fancy, when the positive declaration that a thing *shall be*, would do as well. These are terms that recur very often.

Demanded, have, receive, or take.

Deemed or taken.

Done or committed.—This is prohibitory language. An offence is not committed when it is done.

Doing or performing.—This is directory language. A thing is not done when it is performed.

Drank or consumed.—This is an amusing example, taken from the Beer Act of last Session. It never occurred to any body before, that people bought beer to consume in any other way than by drinking it. At this rate, if a man spilled his beer in carrying it out of the shop, the owner of the house would have committed the offence of selling beer to be consumed on the premises.

It is said that the object was to prevent the dealers from frothing up.

Direct and signify.

Directed and prescribed.

Direction, trust, or power.

Disabilities and incapacities.

Disclosure and discovery.—This is a passage used in Acts to indemnify witnesses for giving evidence where they are personally implicated. Mark the exceeding acumen of the legal penman. A man discloses, when he tells voluntarily—but it is a discovery when the evidence is extorted by cross-examination.

Dispute, controversy, or question.

Duties, or taxes.

Due and payable.—When money is due it is payable—it might be thought, but it is supposed that many are not able to pay when money is due. Hence, it is said, the words should be retained.

Enumerated, set-forth and enumerated.

Election or option.

Effectually and fully.—Effectual implies fulness.

Extend and be applied to.

Extend or be construed to extend.—If a law plainly says it shall be, there is no room, and ought to be none for construction.

Exonerate or discharge.—When a man takes a load off an asses' back, he exonerates him.

Execute and fulfil; Execute and perform.—An execution is the fulfilment of the law.

Fee or gratuity; Perquisites or emoluments; Fee or Reward.—Fee and emoluments would say all that is said by these many words.

Fully and effectually; Full force and effect.—Effect full force.

Frame and make.

Final and conclusive.—What is conclusive is final; the doors are shut against new comers.

From and after.—Used in speaking of an Act of Parliament, as "from and after the passing of the Act." It is

as if a man were to say, five miles from the Standard in Cornhill and lose sight of all the intervening distance.

For and towards.—This is applied to money. When a man gives money for a purpose, he takes care that it is sufficient, and if not, it must be applied as far as it will go.

From and out of.

Forfeit and lose.—It is no forfeit without loss.

Fairly and honestly.

Freed, indemnified and discharged.—Indemnified is a good technical, signifying relief from any consequences; the other two words are included in it.

For or by reason of, or in relation to.

Fit and proper.—What is fit is proper. What is proper is fit.

Faithfully, impartially, and honestly.—When the law requires a thing to be done, and when a person undertakes to do it, it is presumed that he will do it faithfully, and impartially, and honestly; and if there is reason to believe that the party will act, he should be rejected, or security taken that he will act rightly.

Goods and commodities.

Good, valid, and effectual.

Good and sufficient.—What is good in legal acceptance is sufficient; what is sufficient is good.

Gaol, house of correction, or common prison.

Guarantee or security.

Given to or vested in; Given and granted.—The “vested in,” implies the person’s gift. A grant is a gift, a gift is a grant. The lawyers think that grant has more solemnity, relates to more important things, and more solemn occasions; that it befits the gift of a superior to an inferior, both are not necessary in the same place. The word “gift” implies also absence of a valuable consideration, that it is in legal phraseology voluntary; whereas a grant may or may not be moved by a valuable consideration, voluntary or not.

How or in what manner.

Held and considered.

Hinder or prevent.—There is a difference here, but why should both words be used.

Hear and determine.—This is applied to Justices of the Peace, if a man be directed by law to determine, it implies that he should previously hear what the parties have to say.

Hurt or damage.

Illegal and unfounded.

Impeached or called in question.

Implicated or engaged in.

Imprisoned or kept in custody.

Impose, and demand, and receive.

Inquire and ascertain; Inquire, hear and determine.—See note on “Hear and determine.”—The same principle.

Inquire and examine into.—This is saying the same thing.

Intents and purposes.

Interfere with or affect.—“Affect,” includes the former, it is the best word to be used where it is intended that a matter shall in no degree, however slight, be altered. It excludes all larger consequences.

Judgment and determination.

Jurisdiction and authority.—See note on power and jurisdiction.

Justice of the Peace or magistrate.

Just and reasonable.—What is just is reasonable,—what is reasonable is just.

Keep or maintain.

Liable or subject to.

Lands, tenements and hereditaments.

Lessen or reduce.

Levy and recover.

Made and provided.

Made and passed.

Making and completing.—Making includes completing.

A thing is not made till it is complete.

Manner and form.—The manner and the form ; in what do they differ ?

Mentioned or referred to.

Management and conduct.

Meantime and until.

Matter or business.

Neglect or omission.

Name and appoint ; Nominate and appoint.—To appoint includes to name, if the power of nominating be not expressly conferred elsewhere.

Observed and obeyed.

Object or purpose.

Of and from.

Operate or have effect

Order and direction.—When a man orders any thing to be done in a particular way he directs.

Order or decree.—There is a technical distinction here.

The decree is a judgment on the hearing of a cause in the Equity Courts. An order is the judgment on a motion or a petition, or other bye proceeding.

Penalty or Punishment.

Provided and made.—In that case provided and made, one will do as well as both.

Prior and in preference to.

Previously and until.

Practicable or convenient.

Performed or fulfilled.—Words of exactly the same import, the *Per.* in one, and the *Ful.* in the other, express entire doing—completeness.

Permit or suffer.—Suffer includes permit, if the thing be forbidden : if a man suffer that to be done which he could have prevented it is equal to a permission.

Power and authority.—These words always run in couples ; better use power, which being granted by legislative treatment is always an authority.

Power and jurisdiction.—Jurisdiction is the best word ; it is settled as a popular term.

Pay off and discharged ; paid and satisfied.—It would

puzzle any man to discover that when he had paid off a debt he had not discharged it. But this refers to a subtle point of the lawyers, who conceive that when a man has given a security such as a Bill of Exchange ; or even a cheque, the debt is not paid off till the security or the cheque is realized ; and, therefore, though the former debt may be discharged, it is not paid off. Most learned Daniels.

Qualify and entitle.

Rules and regulations ; Rules, orders, and regulations.—

These are favourite expressions. There may, possibly, be a distinction between the terms. A rule may mean the absolute rule—a regulation one modified to suit contingencies of any sort. The distinction is not known in practice—and the terms, like Siamese twins, are always linked together. “Orders” is sometimes added. There is a technical, but not an essential difference here. An order may be special or general, applying to a single case or a whole class of cases. When made by officials it does not differ from a rule, except that it may or may not be made to apply to cases past, existing, or to come. The main difference consists in this—that an order is frequently a judicial proceeding, as an order of sessions, or an order of the courts of equity—and a rule may or may not be so.

Relating or referring to.

Reimburse and defray.

Remain and continue.

Renewed or continued.

Required, authorized and required.

Required and enjoined.

Restrictions and limitations.—A limitation is a restriction, and a restriction is a limitation. The latter appears to be the larger word.

Respecting or concerning.

Raising and levying.—Power to raise implies power to levy, they are identical terms.

Restrain or prevent.—In the way these words are used they commonly mean the same thing.

Reserved or made payable.—If rent, to which this expression is applied, be reserved, it is made payable, the very term implies a payment, or it is no rent or return.

Rate, duties and taxes ; Rated and assessed.—These are the same things and the same modes ; a rate is essentially a duty and a tax :—so is a duty a rate and a tax, and a tax is surely a rate and duty. The general term is tax, it may apply to the local as well as the public tax. Duties is a more specific term, rates yet more specific—there may be occasions when they may be required to be used separately, but never altogether ; rated and assessed are in all respects the same.

Recovering and enforcing payment.—Recovery in a legal sense means the enforcing payment by legal means, enforcing payment is not therefore necessary.

Receive and take—If a man receives, he takes ; he may take without the consent of another. Be sure that the two meanings are intended, generally in statutes they mean same thing.

Revoke or recall.—Is there any difference ?

Subject or liable.

Subscribed or contributed.

Sufficient or necessary.—If all that is necessary be prescribed, the sufficiency is also prescribed.

Shall be and remain.

Shares and proportions.

Should and might.

Shall and may.

Solely and exclusively.

Salary, fees, and emoluments.

Suing for and recovering.

Serve and execute.

Set forth and enumerated.—That which is enumerated is set forth.

Severally and respectively.

Save and except.

Sworn before and attested.

Think proper and direct.—If the law empowers a man to give directions, it presumes that he shall think them

proper ; else no discretion would be allowed, and either the legislature would make a positive rule for his guidance, or appoint some authority in whom should rest the power of making the rule.

Then and in that case ; Then and in every such case.—If the previous contingencies be distinctly described, the word then is sufficient.

Take effect—commence, and take effect.

Taken—deemed and taken.

Take and subscribe.

Tolls or duty.—Tolls is the generic name.

Time being (for the time being.)

Trade or business.—It would be hard to say what is not a trade and what is not a business. A surgeon who sells drugs carries on a trade ; but if he cuts off legs, it is a business : on such refinements do legal quibbles rest. Sometimes a profession, sometimes an occupation, sometimes an employment are brought together to eke out a generality, which has little to do with the matter in hand.

True and faithful.

Transferred to and vested in.—That which is transferred by law to another, vests in him until the law transfers it to a third party.

Terms, conditions and exceptions.

Taxes, taxes or duties.

Valid and conclusive.—What the law makes conclusive is valid, or it would conclude nothing.

Varied, altered or modified.

Under or in pursuance of.

Under or by virtue of ; Under or subject to.—These are words repeated ten thousand times in a session, and are all included in the word “ Under ; ” this is perhaps the choicest set of lengthening phrases.

Unlawful or prohibited.—That which the law prohibits is unlawful.

Unload or discharge.

Unite and agree.

Unless and until.

Used or occupied by.

Use and benefit.

Utterly null and void.—A thing is void, what more is wanted; it is null—that is not strong enough; it must be utterly null.

When and as; When and so often.—In no other writings is this specificity thought necessary. “When” sufficiently marks the contingency whether it happen once or once and again.

Whosoever, whatsoever, whatever.—These words usually form the tail of phrases, which have already expressed the fulness of wholeness,—they serve to give the notion that excess of expression is necessary.

Well and truly.—The law supposes nothing to be done, which is not done well and truly.

Will and pleasure.—These are remnants of the old style. Courteous expressions of the despotism of the King’s will, which has long ceased to be true in fact.

Wanton and malicious.—The very essence of malice is wantonness, at least it must be presumed that the law will not excuse the malice, if it be not founded on a sufficient legal excuse. There is no necessity for coupling the words, as pointer or setter; the thing to be guarded against is either wantonness in its entire want of motive, or malice with its bad feeling; the law makes no difference between the acts. The want of a motive for doing a mischief, is as bad as the presence of a bad motive. There is a most criminal thoughtlessness in the one case: in the other an equally criminal disposition.

TABLE
OF
PUBLIC GENERAL ACTS.

4 & 5 WILLIAM IV.



TABLE*
OF
PUBLIC GENERAL ACTS.

1. To explain and amend Act of last Session, for regulating the Labour of Children and young Persons in the Mills and Factories of United Kingdom.
2. To apply certain Sums to Service of 1834.
3. For raising £14,000,000 by Exchequer Bills, for the Service of 1834.
4. For Regulating the Marine Forces while on Shore.

* This Table has been greatly abridged, in order to bring it within a reasonable compass in this book. It is not pretended that it should be deprived so largely of its fair proportions. The object was to give some notion of the course and nature of the legislation of the past session; and, without increasing the Table of Classification in the body of the work, to give all essential particulars for its elucidation. The Table of Classification would have been more completely illustrative of its object if the titles here given had been put under the mere head-titles of statutes there classed; but this table was also required for its purposes; and it would have been of the book-making a character to insert both at the expense of so much space.

The Table must be read as if many "the's" and short words were there. With this exception, its full meaning will be apparent. In some respects, it will have gained by the reduction of its terms.

5. For continuing until 5 July, 1835, certain Duties on Sugar imported into United Kingdom, for the Service of 1834.

6. For punishing Mutiny and Desertion, and for better Payment of the Army and their Quarters.

7. To repeal, at the Period within mentioned, so much of an Act of 5th of Geo. III, intituled *An Act to alter certain Rates of Postage, and to amend, explain, and enlarge several Provisions in an Act of the Ninth of Queen Anne, and in other Acts relating to Revenue of Post Office*, as authorizes the taking of certain Rates of Inland Postage in *North America*.

8. To amend an Act of last Session, for consolidating and amending the Laws relative to Jurors and Juries in *Ireland*.

9. To indemnify such Persons in United Kingdom as have omitted to qualify themselves for Offices and Employments, and for extending the Time limited for those Purposes respectively until the 25th March 1835; to permit such Persons in *Great Britain* as have omitted to make and file Affidavits of Execution of Indentures of Clerks to Attornies and Solicitors to make and file the same on or before the First Day of *Hilary Term* 1835; and to allow Persons to make and file such Affidavits, although Persons whom they served shall have neglected to take out Annual Certificates.

10. For continuing until 1st June 1836, several Acts for regulating the Turnpike Roads in *Great Britain* which will expire with present or next Session.

11. For continuing to His Majesty until 5th July 1835, certain Duties on Offices and Pensions, for the Service of the Year 1833; and to appropriate any Sums arising from the Redemption of the Land Tax.

12. To apply Seven Millions, out of Consolidated Fund, to the Service of Year 1834.

13. To repeal so much of an Act of last Session, for Prevention of Smuggling, as authorizes Magistrates to sentence Persons convicted of certain Offences to serve in the Navy and to alter and amend said Act.

14. To repeal so much of several Acts as authorizes issuing any Money out of the Consolidated Fund for Engagement of reeling or dressing Hemp or Flax.

15. To regulate the Office of Receipt of the Exchequer at *Westminster*.

16. To abolish Office of Recorder of Great Roll or Clerk of the Pipe in the Exchequer in *Scotland*.

17. To indemnify Witnesses who may give Evidence before the Lords, on a Bill for preventing Bribery and Corruption and illegal Practices in the Election of Members of Parliament for *Warwick*.

18. To indemnify Witnesses who may give Evidence before the Lords on a Bill to exclude the Freemen of *Liverpool* from voting at Election of Members of Parliament.

19. To repeal certain Duties on Inhabited Dwelling Houses.

20. To explain and amend Act of 53 Geo. II. to regulate Conveyance and Sale of Fish at First Hand.

21. For amending certain Provisions of an Act of 35th of Geo. III. for regulating buying and selling of Hay and Straw.

22. To amend an Act of the 11th Year of Geo. II. respecting Apportionment of Rents, Annuities, and other periodical Payments.

23. For Amendment of Law relative to Escheat and Forfeiture of Real and Personal Property holden in Trust.

24. To alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to Persons in respect of their having held Civil Offices in His Majesty's Service.

25. To alter and extend the Provisions of an Act of 11th of Geo. IV. for amending and consolidating Laws relating to Pay of Royal Navy.

26. To abolish Practice of hanging the Bodies of Criminals in Chains.

27. For the better Administration of Justice in certain Boroughs and Franchises.

28. To amend Laws relative to Marriages celebrated by Roman Catholic Priests and Ministers not of the Established Church, in *Scotland*.

29. For facilitating the Loan of Money upon Landed Securities in *Ireland*.

30. To facilitate the Exchange of Lands lying in Common Fields.

31. For transferring, certain Annuities of £4. per cent. per ann. into Annuities of £3 10s. per cent. per ann. and for providing for paying off dissents.

32. For reducing Tonnage Rates payable in Port of *London*.

33. To repeal so much of several Acts as require Deposits to be made upon Teas sold at *East India Company's Sales*.

34. To repeal Laws relating to Contribution out of Merchant Seamen's Wages towards Support of Naval Hospital at *Greenwich*, and for supplying other Funds in lieu thereof.

35. For Better Regulation of Chimney Sweepers and their Apprentices, and for safer Construction of Chimneys and Flues.

36. For establishing a new Court for Trial of Offences committed in Metropolis and Parts adjoining.

37. To prohibit any further Lotteries under an Act passed in present Reign, for Improvement of *Glasgow*.

38. To continue, under certain Modifications, to 1st Aug. 1835, an Act of Third Year of present Reign, for more effectual Suppression of local Disturbances and dangerous Associations in *Ireland*.

39. To give Costs in Actions of Quare impedit.

40. To amend an Act of 10th of Geo. IV., to consolidate and amend the Laws relating to Friendly Societies.

41. To regulate Appointment of Ministers to Churches in *Scotland* erected by voluntary Contribution.

42. To facilitate taking of Affidavits and Affirmations in Vice-Wardens' Court of the Stannaries of *Cornwall*.

43. To authorize Persons duly appointed to act as Justices of the Peace in the Islands of *Scilly*, although not qualified according to Law.

44. To regulate Conveyance of printed Newspapers by Post between United Kingdom, British Colonies, and Foreign Parts.

45. To amend an Act of present Session, for altering and consolidating the Laws for regulating Pensions and Allowances to Persons in respect of having held Civil Offices in His Majesty's Service.

46. To amend an Act of 58th Geo. III. for establishing

Fever Hospitals, and to make other Regulations for Relief of suffering Poor, and for preventing the Increase of Infectious Fevers, in *Ireland*.

47. For preventing the Interference of the Spring Assizes with *April* Quarter Sessions.

48. To regulate the Expenditure of County Rates and Funds in aid thereof.

49. To amend and render more effectual Two Acts of 5th and 6th Years of Geo. IV., relating to Weights and Measures.

50. To amend an Act of 49 Geo. III. for amending the *Irish* Road Acts.

51. To amend Laws relating to Collection and Management of the Revenue of Excise.

52. To amend an Act of 20 Geo. II. for the Relief and Support of sick, maimed, and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned in the Merchant Service; and for other Purposes.

53. To continue for 1 Year, and thence to the End of then next Session, several Acts relating to Importation and keeping of Arms and Gunpowder in *Ireland*.

54. To continue for 5 Years from the 5th of *April* 1835, and to amend the Acts for authorizing a Composition for Assessed Taxes.

55. To amend Three Acts, made respectively in 7 Geo. IV. and in 1 & 2, and 2 & 3 Years of present Reign, for the uniform Valuation of Lands and Tenements in the several Baronies, Parishes, and other Divisions of Counties in *Ireland*; and to provide for more effectual Levy of Grand Jury Cess.

56. To continue for One Year, and thence to End of then next Session, Acts for Relief of Insolvent Debtors in *Ireland*.

57. To repeal Stamp Duties on Almanacks and Directories, and to give other Relief with relation to Stamp Duties in *Great Britain* and *Ireland* respectively.

58. For raising £14,384,700 by Exchequer Bills, for the Service of Year 1834.

59. To extend Term of Act of the 1st and 2nd Years of present Reign, for ascertaining Boundaries of Forest of

Dean, and for inquiring into Rights and Privileges claimed by Free Miners of Hundred of *Saint Briavel's*, to 21 Jan. 1835, and thence to End of then next Session.

60. To amend Laws relating to Land and Assessed Taxes, and to consolidate Boards of Stamps and Taxes,

61. For more effectually providing Erection of certain Bridges in *Ireland*.

62. For improving Practice and Proceedings in Court of Common Pleas of County Palatine of *Lancaster*.

63. To defray Charge of Pay, Clothing, and contingent and other Expenses of Disembodied Militia in *Great Britain and Ireland*; and to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistants Surgeons' Mates, and Serjeant Majors of the Militia, until 1st July 1835.

64. To suspend until End of next Session making of Lists and Ballots and Enrolments for Militia of United Kingdom.

65. For more effectual Administration of Justice at *Norfolk Island*.

66. For empowering the Commissioners of Woods and Forests, to pay the Net Proceeds of Tolls of the *Menai and Conway Bridges* into Exchequer at *Westminster*, to Account of the Consolidated Fund.

67. For abolishing Capital Punishments in case of returning from Transportation.

68. To authorize an Advance out of the Suitor's Fund of the Courts of Chancery and Exchequer in *Ireland*, towards purchasing of Ground, and building thereon Offices necessary to the Courts of Justice in *Dublin*.

69. For placing *Mumbles' Head* Lighthouse in *Glamorganshire* under the Management of Corporation of the *Trinity House of Deptford Strond*.

70. To regulate Salaries of Officers of House of Commons, and abolish Sinecure Offices of Principal Committee Clerks and Clerks of Ingrossments.

71. To repeal certain Provisions of Two Acts of Geo. III. affecting Printers, Publishers, and Proprietors of Newspapers in *Ireland*.

72. To amend several Acts for authorizing the Issue of Exchequer Bills for carrying on Public Works and Fish-

eries and for the Employment of the Poor; and to authorize a further Issue for Purposes of said Acts.

73. To grant Relief from Assessed Taxes in certain Cases.

74. To continue until 5th March 1835, and thence to End of then next Session, an Act of 54th Geo. III. for rendering Payment of Creditors more equal and expeditious in *Scotland*.

75. To repeal Duties on Spirits made in *Ireland*, and to impose other Duties; and to impose additional Duties on Licences to Retailers of Spirits in United Kingdom.

76. For Amendment and better Administration of Laws relating to the Poor in *England* and *Wales*.

77. For repealing Duties on Starch, Stone Bottles, Sweets or Made Wines, Mead or Metheglin, and on Scaleboard made from Wood.

78. For Amendment of Proceedings and Practice of Court of Chancery in *Ireland*.

79. To amend Law relating to Insolvent Debtors in *India*.

80. To provide for Repayment to Governor and Company of Bank of *England* of One Fourth Part of Debt due from the Public to said Company, in pursuance of an Act of last Session.

81. To amend an Act of Geo. IV. for regulating Turnpike Roads in *England*, so far as the same relates to the Weights to be carried upon Waggon with Springs.

82. To amend and extend Act of 2nd Year of present Reign, to effectuate Service of Process issuing from the Courts of Chancery and Exchequer in *England* and *Ireland*.

83. To amend Act passed in 3rd Year of present Reign, intituled *An Act for shortening the Time required in Claims of Modus Decimandi, or Exemption from or Discharge of Tithes*.

84. To apply a Sum of Money out of the Consolidated Fund and the Surplus of Grants to the Service of Year 1834, and to appropriate the Supplies granted in this Session.

85. To amend Act passed in 1st Year of present Reign, to permit the general Sale of Beer and Cider by Retail in *England*.

400 TABLE OF PUBLIC GENERAL ACTS.

86. To explain certain provisions in an Act of 3rd and 4th Years of present Reign, to provide for the Election of Magistrates and Councillors for the several Burghs and Towns of *Scotland* which now return or contribute to return Members to Parliament, and are not Royal Burghs.

87. To explain certain Provisions of an Act of the 3rd and 4th Years of present Reign, to alter and amend the Laws for the Election of the Magistrates and Councils of the Royal Burghs in *Scotland*.

88. For the more effectual Registration of Persons entitled to vote in Election of Members of Parliament in *Scotland*.

89. To amend the Laws relating to the Customs.

90. To amend an Act made in the 3rd and 4th Year of present Reign, intituled *An Act to alter and amend the Laws relating to the Temporalities of the Church of Ireland*.

91. To continue for One Year, and thence to the End of the next Session, the several Acts for regulating the Turnpike Roads which will expire during the present or before the End of next Session, and to amend several Acts regulating the Post Roads, in *Ireland*.

92. For the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance in *Ireland*.

93. To amend Laws relating to Appeals against summary Convictions before Justices of Peace in *Ireland*.

94. To enable His Majesty to invest trading and other Companies with Powers necessary for due Conduct of their Affairs, and for Security of Rights and Interests of their Creditors.

95. To empower His Majesty to erect *South Australia* into a *British* Province or Provinces, and provide for Colonization and Government thereof.

96. To enable the Commissioners of Sewers for City and Liberty of *Westminster* and Part of *Middlesex* to make a new Sewer at *Bayswater* in *Middlesex*.

THE END.

LONDON:

SCHULZE AND CO., 13, POLAND STREET.

1. The first part of the document is a list of names and dates, which appears to be a record of some kind. The names are written in a cursive script, and the dates are in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right.

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